

ATTACHMENT 4

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA
3

4 -----
5 IN RE: PROCESSED EGG PRODUCTS MDL No. 2002
6 ANTITRUST LITIGATION 80-md-02002
7 -----

8 THIS DOCUMENT RELATES TO:
9 ALL ACTIONS
10 -----

11 -- HIGHLY CONFIDENTIAL --
12

13 VIDEOTAPED 30(b)(6)
14 AND INDIVIDUAL DEPOSITION OF
15 TERRY L. BAKER
16 Taken Thursday, August 22, 2013
17 Scheduled for 8:30 a.m.
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21
22
23
24

25 Reported by: Dana Anderson-Linnell

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<p style="text-align: right;">2</p> <p>1 DEPOSITION OF TERRY L. BAKER taken on Thursday, 2 August 22, 2013, commencing at 8:35 a.m. at the 3 offices of Leonard, Street and Deinard, 150 South 4 Fifth Street, Suite 2300, Minneapolis, Minnesota, 5 before Dana S. Anderson-Linnell, a Shorthand 6 Reporter and Notary Public in and of the State of 7 Minnesota. 8 ***** 9 10 APPEARANCES 11 12 On Behalf of the Direct Purchaser Plaintiff 13 Class: 14 Stephen Neuwirth, Esquire 15 Lee Turner-Dodge, Esquire 16 QUINN, EMANUEL, URQUHART & SULLIVAN, LLP 17 51 Madison Avenue, 22nd Floor 18 New York, New York 10010 19 Phone: 212.849.7000 20 Email: stephenneuirth@quinnemanuel.com 21 leeturnerdodge@quinnemanuel.com 22 23 (Appearances continued on the next page.) 24 25</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of Rose Acre Farms Inc.: 4 Donald M. Barnes, Esquire 5 PORTER, WRIGHT, MORRIS & ARTHUR, LLP 6 1919 Pennsylvania Avenue, NW 7 Suite 500 8 Washington, District of Columbia 20006 9 Phone: 202.778.3056 10 Email: dbarnes@porterwright.com 11 12 On Behalf of Michael Foods Inc.: 13 William L. Greene, Esquire 14 LEONARD, STREET AND DEINARD 15 150 South Fifth Street, Suite 2300 16 Minneapolis, Minnesota 55402 17 Phone: 612.335.1568 18 Email: william.greene@leonard.com 19 20 (Appearances continued on the next page.) 21 22 23 24 25</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of the Direct Action Plaintiffs: 4 John F. Kinney, Esquire 5 JENNER & BLOCK, LLP 6 353 North Clark Street 7 Chicago, Illinois 60654-3456 8 Phone: 312.222.9350 9 Email: jkinney@jenner.com 10 11 On Behalf of the Indirect Purchaser 12 Plaintiffs: 13 Merrick Scott Rayle, Esquire 14 LOVELL, STEWART, HALEBIAN, JACOBSON, LLP 15 61 Broadway, Suite 501 16 New York, New York 10006 17 Phone: 415.533.5316 18 Email: msrayle@sbcglobal.net 19 20 (Appearances continued on the next page.) 21 22 23 24 25</p>	<p style="text-align: right;">5</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of United Egg Producers and 4 United States Egg Marketers: 5 Evan W. Davis, Esquire (via telephone) 6 PEPPER HAMILTON, LLP 7 3000 Two Logan Square 8 Eighteenth and Arch Streets 9 Philadelphia, Pennsylvania 19103-2799 10 Phone: 215.981.4245 11 Email: davisew@pepperlaw.com 12 13 On Behalf of Nu-Cal Foods: 14 Margaret A. Ziemianek, Esquire (via telephone) 15 KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP 16 101 California Street 17 Suite 2300 18 San Francisco, CA 94111 19 Phone: 415.655.4335 20 Email: mziemianek@kasowitz.com 21 22 (Appearances continued on the next page.) 23 24 25</p>

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<p>1 APPEARANCES (continued):</p> <p>2</p> <p>3 On Behalf of Midwest Poultry Services LP:</p> <p>4 Ryan M. Hurley, Esquire (via telephone)</p> <p>5 FAEGRE BAKER DANIELS, LLP</p> <p>6 300 North Meridian Street</p> <p>7 Suite 2700</p> <p>8 Indianapolis, IN 46204</p> <p>9 Phone: 317.237.1144</p> <p>10 Email: ryan.hurley@faegrebd.com</p> <p>11</p> <p>12 On Behalf of Moark LLC and Norco Ranch:</p> <p>13 Travis Kennedy, Esquire (via telephone)</p> <p>14 EIMER STAHL, LLP</p> <p>15 224 South Michigan Avenue, Suite 1100</p> <p>16 Chicago, Illinois 60604</p> <p>17 Phone: 312.660.7672</p> <p>18 Email: tkennedy@eimerstahl.com</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT: Carolyn V. Wolski, Michael Foods Inc.</p> <p>22 Charles Bonin, videographer</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX OF EXHIBITS (continued): PAGE</p> <p>2</p> <p>3 T. Baker Exhibit 3 - CONFIDENTIAL - November</p> <p>4 19, 2004 letter to Terry Baker from</p> <p>5 Roger Deffner, Bates MFI0615604 to 609 64</p> <p>6</p> <p>7 T. Baker Exhibit 4 - CONFIDENTIAL - Email</p> <p>8 from Vince O'Brien to Terry Baker dated</p> <p>9 August 3, 2005, Bates MFI0043142 68</p> <p>10</p> <p>11 T. Baker Exhibit 5 - CONFIDENTIAL - Email</p> <p>12 From Gene Gregory to multiple recipients</p> <p>13 dated December 8, 2006, Bates MFI0110364 72</p> <p>14</p> <p>15 T. Baker Exhibit 6 - CONFIDENTIAL - UEP</p> <p>16 Board of Directors Meeting Minutes,</p> <p>17 January 25, 2005, Bates UE0210299 to 303 83</p> <p>18</p> <p>19 T. Baker Exhibit 7 - CONFIDENTIAL - Egg</p> <p>20 Industry Economic Alert, Bates MFI0006321</p> <p>21 to 322 95</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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1	INDEX OF EXHIBITS (continued): PAGE	1	THE VIDEOGRAPHER: Good morning.
2		2	We are now on the record. Please note that
3	DAP - BAKER Exhibit W - HIGHLY CONFIDENTIAL -	3	the microphones are sensitive and may pick up
4	Business Conduct Policy, Michael Foods, Inc.,	4	whispering and private conversations. Please
5	Bates MFI0053741 to 763 243	5	turn off all cell phones and place them away
6		6	from the microphones as they can interfere
7	DAP - BAKER Exhibit X - HIGHLY CONFIDENTIAL -	7	with the deposition audio. Recording will
8	Procurement Strategic Planning Meeting	8	continue until all parties agree to go off the
9	Minutes, September 12, 2001, Bates	9	record.
10	MFI0018744 to 745 271	10	My name is Charles Bonin
11		11	representing Veritext National Deposition and
12	DAP - BAKER Exhibit BB - HIGHLY CONFIDENTIAL -	12	Litigation Services.
13	MFI Food Ingredient Sales Meeting, Bates	13	Today's date is August 22nd, 2013.
14	MFI0038661 to 698 274	14	The time is approximately 8:35 a.m.
15		15	This deposition is being held at
16	DAP - BAKER Exhibit DD - CONFIDENTIAL -	16	Leonard, Street and Deinard located at 150
17	Email and attachments, subject is Urner	17	South Fifth Street, Suite 2300, Minneapolis,
18	Barry market reaction to new layer house	18	Minnesota 55402.
19	construction, Bates MFI0039904 to 907 276	19	This is In Re: Processed Eggs
20		20	Antitrust Litigation.
21	DAP - BAKER Exhibit EE - spreadsheet with	21	The name of the witness is Terry L.
22	Bates written of MFI0328649 on front page 266	22	Baker.
23		23	At this time the attorneys present
24		24	in the room and attending remotely will
25		25	identify themselves and the parties they

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18	20
<p>1 represent.</p> <p>2 MR. NEUWIRTH: Stephen Neuwirth</p> <p>3 from Quinn, Emanuel, Urquhart & Sullivan</p> <p>4 representing the plaintiffs.</p> <p>5 MS. TURNER-DODGE: Lee Turner-Dodge</p> <p>6 also from Quinn, Emanuel, Urquhart & Sullivan</p> <p>7 representing the plaintiffs.</p> <p>8 MR. KINNEY: John Kinney, Jenner</p> <p>9 and Block, Chicago, representing Kraft,</p> <p>10 Kellogg's, General Mills and Nestle.</p> <p>11 MR. BARNES: Donald Barnes, Porter,</p> <p>12 Wright, Morris and Arthur representing Rose</p> <p>13 Acre Farms.</p> <p>14 MS. WOLSKI: Carolyn Wolski,</p> <p>15 general counsel of Michael Foods.</p> <p>16 MR. GREENE: William L. Greene,</p> <p>17 Leonard, Street and Deinard, counsel for</p> <p>18 Michael Foods.</p> <p>19 MR. NEUWIRTH: Before we go to the</p> <p>20 phone, I guess I should just clarify that when</p> <p>21 I say "plaintiffs," I mean the direct</p> <p>22 purchaser class plaintiffs. Thank you.</p> <p>23 THE COURT REPORTER: And on the</p> <p>24 phone?</p> <p>25 MR. DAVIS: This is Evan Davis from</p>	<p>1 just to state your full name for the record.</p> <p>2 A. Terry Lee Baker.</p> <p>3 Q. And Mr. Baker, if at any point today you</p> <p>4 want to take a break, just let me know. And</p> <p>5 if at any point today any question that I ask</p> <p>6 you is unclear, please feel free to ask me to</p> <p>7 clarify. Is that okay?</p> <p>8 A. Yes.</p> <p>9 Q. Thank you. You are currently employed by</p> <p>10 Michael Foods?</p> <p>11 A. Yes.</p> <p>12 Q. And is there a particular entity within</p> <p>13 Michael Foods by which you are employed?</p> <p>14 A. No. Michael Foods Egg Products Company</p> <p>15 is the division or the group, yes.</p> <p>16 Q. And what is your current title?</p> <p>17 A. I'm the vice president of egg</p> <p>18 procurement.</p> <p>19 MR. GREENE: Steve, can we put two</p> <p>20 stipulations that -- standard stipulations on</p> <p>21 the record?</p> <p>22 First, that all objections other</p> <p>23 than objections to form are preserved and an</p> <p>24 objection for one is an objection for all?</p> <p>25 MR. NEUWIRTH: Yes.</p>
19	21
<p>1 Pepper Hamilton representing United Egg</p> <p>2 Producers and United States Egg Marketers.</p> <p>3 MS. ZIEMIANEK: This is Margaret</p> <p>4 Ziemianek of Kasowitz, Benson, Torres and</p> <p>5 Friedman representing Nu-Cal Foods Inc.</p> <p>6 MR. HURLEY: Ryan Hurley, Faegre,</p> <p>7 Baker, Daniels representing Midwest Poultry</p> <p>8 Services LP.</p> <p>9 THE VIDEOGRAPHER: Our court</p> <p>10 reporter --</p> <p>11 MR. KENNEDY: Travis Kennedy</p> <p>12 representing Moark LLC and Norco Ranch Inc.</p> <p>13 THE VIDEOGRAPHER: Our court</p> <p>14 reporter, Dana Anderson, representing</p> <p>15 Veritext, will swear in the witness and we can</p> <p>16 proceed.</p> <p>17</p> <p>18 TERRY L. BAKER,</p> <p>19 called as a witness, being first duly sworn, was</p> <p>20 examined and testified as follows:</p> <p>21</p> <p>22 EXAMINATION</p> <p>23</p> <p>24 BY MR. NEUWIRTH:</p> <p>25 Q. Good morning. Could you be good enough</p>	<p>1 BY MR. NEUWIRTH:</p> <p>2 Q. For how long have you held your current</p> <p>3 position?</p> <p>4 A. Since 1997.</p> <p>5 Q. And prior to 1997 were you also employed</p> <p>6 by Michael Foods?</p> <p>7 A. Yes, I was.</p> <p>8 Q. And what position or positions did you</p> <p>9 hold prior to 1997?</p> <p>10 A. I've had a variety of jobs. I've been</p> <p>11 with Michael Foods since 1977. I've been a</p> <p>12 corporate controller, a fleet manager, a vice</p> <p>13 president of administrative services, probably</p> <p>14 that was the most recent prior to the current</p> <p>15 position in 1997.</p> <p>16 Q. And do you have an understanding of how</p> <p>17 it came to be, given the role you played in</p> <p>18 this in those past positions, that you became</p> <p>19 involved in procurement after 1997?</p> <p>20 A. Yes.</p> <p>21 Q. And how did that come to be?</p> <p>22 A. I just had a lot of experience. I'd</p> <p>23 also -- when I was in a controller role, I</p> <p>24 worked with our farm group. So I have a very</p> <p>25 working knowledge of the production process,</p>

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<p>1 the farm process. Also worked with our plant</p> <p>2 side. So I've worked with a lot of different</p> <p>3 areas to really understand the whole supply</p> <p>4 chain pretty well.</p> <p>5 Q. And you've indicated today that your job</p> <p>6 title includes the word "procurement,"</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. What is the type of procurement that you</p> <p>10 understand to be within the scope of your job</p> <p>11 responsibilities at the present time?</p> <p>12 A. Our egg procurement group covers all of</p> <p>13 our external sourcing for shell eggs and</p> <p>14 liquid egg for all of the Michael Foods</p> <p>15 locations.</p> <p>16 Q. And external sourcing refers to</p> <p>17 purchasing shell eggs from other producers of</p> <p>18 shell eggs?</p> <p>19 A. Yes.</p> <p>20 Q. And what is the reason that Michael Foods</p> <p>21 chooses to procure shell eggs from third</p> <p>22 parties?</p> <p>23 A. We have -- we have a -- one of our</p> <p>24 objectives is is that we always try to</p> <p>25 maintain at least some level of shell egg</p>	<p>1 egg purposes that's a regional kind of</p> <p>2 operation. So it's primarily Pennsylvania,</p> <p>3 some Ohio. And then in the Midwest, of</p> <p>4 course, we're in Nebraska with a breaking</p> <p>5 operation. So we procure shell eggs from</p> <p>6 South Dakota, Nebraska, Minnesota, Iowa.</p> <p>7 Q. And has it been true since 1997 that</p> <p>8 you've had shell egg procurement in both the</p> <p>9 East and the Midwest as you've just described?</p> <p>10 A. Yes.</p> <p>11 Q. And I take it that prior to the very</p> <p>12 recent period in the East, you were talking</p> <p>13 not just about Pennsylvania but also</p> <p>14 New Jersey?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Now, you said that you came to</p> <p>17 Michael Foods in 1977, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Prior to that time, had you been employed</p> <p>20 by any other companies in any business related</p> <p>21 to eggs?</p> <p>22 A. No.</p> <p>23 Q. Did you have any other employment prior</p> <p>24 to 1977?</p> <p>25 A. Yes, I worked at a bank for two years</p>
23	25
<p>1 purchasing and what we call -- refer to as</p> <p>2 offline breaking in our facilities. It helps</p> <p>3 us with many specialty egg needs or demands.</p> <p>4 It gives us some flex point, a little easier.</p> <p>5 But the majority -- by far the majority of our</p> <p>6 sourcing is liquid tankers.</p> <p>7 Q. Now, in terms of shell egg purchasing,</p> <p>8 has that -- is that something that Michael</p> <p>9 Foods has done since you started in your</p> <p>10 current position in 1997?</p> <p>11 A. Yes.</p> <p>12 Q. And so is it fair to say that from 1997</p> <p>13 to the present, you've had a role at Michael</p> <p>14 Foods with respect to the procurement of shell</p> <p>15 eggs from third parties that produce them?</p> <p>16 A. Yes.</p> <p>17 Q. And is there a particular region of the</p> <p>18 country where Michael Foods procures most of</p> <p>19 the shell eggs that it purchases?</p> <p>20 A. We have two primary regions. We have our</p> <p>21 eastern region with a breaking operation in</p> <p>22 New Jersey -- or Pennsylvania. I'm sorry. We</p> <p>23 just closed down the New Jersey one. So now</p> <p>24 we're -- that breaking operation is in</p> <p>25 Pennsylvania. So we -- obviously for shell</p>	<p>1 approximately after college.</p> <p>2 Q. Two years after college?</p> <p>3 A. College, yeah.</p> <p>4 Q. And what type of role did you play at</p> <p>5 that bank?</p> <p>6 A. I was in the finance area.</p> <p>7 Q. Okay. And how did it come to be that you</p> <p>8 went from a position in a bank to working for</p> <p>9 Michael Foods?</p> <p>10 A. I grew up in Wakefield, Nebraska and</p> <p>11 Wakefield is the home plant for what was --</p> <p>12 what's referred to today as the M.G. Waldbaum</p> <p>13 Company. And so I grew up in that town. And</p> <p>14 the owner at that point, I had known him my</p> <p>15 whole life, and so he offered me a job one</p> <p>16 Saturday afternoon. And so on July 1st of '77</p> <p>17 that's when I started working there. And by</p> <p>18 the way, I did start -- I did work there</p> <p>19 part-time in college too in the processing</p> <p>20 operation. So I did -- I failed to mention</p> <p>21 that. But yeah, I did work there part-time</p> <p>22 for summers and -- a couple summers, I guess.</p> <p>23 Q. And what was the name of the owner at</p> <p>24 that time who offered you that job in 1977?</p> <p>25 A. His name was Dan Gardner.</p>

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<p>1 Q. And you mentioned that you worked at the</p> <p>2 bank after college. Which college did you</p> <p>3 attend?</p> <p>4 A. Wayne State College in Wayne, Nebraska.</p> <p>5 Q. And did you earn a particular type of</p> <p>6 degree there?</p> <p>7 A. Yeah. It was a B.S. in accounting.</p> <p>8 Q. Okay. Now, do you understand that you</p> <p>9 are here today in two capacities, both as an</p> <p>10 individual witness as well as -- as what's</p> <p>11 referred to as a corporate witness on certain</p> <p>12 particular topics?</p> <p>13 A. Yes.</p> <p>14 MR. NEUWIRTH: Let's mark as Baker</p> <p>15 Exhibit 1 -- when I say Baker exhibit today,</p> <p>16 we're referring -- these are actually being</p> <p>17 marked as T. Baker just to distinguish them</p> <p>18 from any other Baker in the case. And we know</p> <p>19 that there's at least one other witness named</p> <p>20 Baker. So what I'm marking as Baker Exhibit 1</p> <p>21 today is the Plaintiffs' Notice of Deposition</p> <p>22 Under Rule 30(b)(6) to Defendant Michael Foods</p> <p>23 Inc.</p> <p>24 (Exhibit Number 1 marked for</p> <p>25 identification.)</p>	<p>1 that topic 1 is: Your membership and</p> <p>2 participation in the UEP, including elected or</p> <p>3 appointed positions you held, committees that</p> <p>4 you served on, your meeting attendance,</p> <p>5 motions made and votes taken at all UEP</p> <p>6 meetings.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And is it correct that you are here today</p> <p>10 to serve as a corporate representative on that</p> <p>11 topic with respect to your own participation</p> <p>12 on behalf of Michael Foods in UEP activities?</p> <p>13 A. Yes.</p> <p>14 Q. And did you do anything to prepare</p> <p>15 yourself to serve as a corporate</p> <p>16 representative on that particular topic?</p> <p>17 A. No.</p> <p>18 Q. Okay. And so is it fair then to</p> <p>19 understand that for -- with respect to that</p> <p>20 topic in your capacity as a corporate</p> <p>21 representative you'll be relying solely on</p> <p>22 your own personal recollection of events?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Let me ask you if you can look at</p> <p>25 topic number 7, which you see it says: Your</p>
27	29
<p>1 MR. NEUWIRTH: And Madam Court</p> <p>2 Reporter, I will always hand you two copies of</p> <p>3 the exhibit so you can mark one for the</p> <p>4 witness and have one to look at while you're</p> <p>5 transcribing.</p> <p>6 BY MR. NEUWIRTH:</p> <p>7 Q. And Mr. Baker, take as much time as you</p> <p>8 need to look at this. But the first question</p> <p>9 I have is whether this is something that</p> <p>10 you've seen prior to my handing it to you</p> <p>11 today.</p> <p>12 A. (Reviews document.) I don't know that</p> <p>13 I've seen the -- this is the entire list, is</p> <p>14 it not?</p> <p>15 Q. Yeah, I can represent to you that this is</p> <p>16 a notice that includes a listing of all of the</p> <p>17 topics for which plaintiffs are seeking</p> <p>18 corporate testimony from Michael Foods.</p> <p>19 I take it from your answer that you may</p> <p>20 have seen a partial version of this list?</p> <p>21 A. Yes, of those items that were designated</p> <p>22 for me or to me.</p> <p>23 Q. Okay. So why don't we turn on page</p> <p>24 number 4 of this document to a listing that's</p> <p>25 under the heading Schedule A. And you see</p>	<p>1 participation in the UEP Certified program.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And do you understand that you are here</p> <p>5 as a corporate representative to testify on</p> <p>6 behalf of Michael Foods concerning Michael</p> <p>7 Foods' implementation of the UEP Certified</p> <p>8 program?</p> <p>9 MR. GREENE: Objection to</p> <p>10 questioning the witness on what he's here to</p> <p>11 testify for under 30(b)(6) as there was</p> <p>12 a -- there's correspondence that lays that out</p> <p>13 with all the qualifications and I think in</p> <p>14 fairness that should be in front of the</p> <p>15 witness.</p> <p>16 MR. NEUWIRTH: Well, I'm asking the</p> <p>17 witness if he knows what he's here to do. And</p> <p>18 I can tell you that you yourself sent us a</p> <p>19 letter -- or actually your co-counsel, Carrie</p> <p>20 Anderson, sent us a letter --</p> <p>21 MR. GREEN: Uh-huh.</p> <p>22 MR. NEUWIRTH: -- which expressly</p> <p>23 stated: Mr. Baker is specifically designated</p> <p>24 to testify regarding Michael Foods'</p> <p>25 implementation of the UEP Certified program.</p>

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<p style="text-align: right;">30</p> <p>1 That is what her letter said.</p> <p>2 MR. GREENE: It's not the entire</p> <p>3 paragraph, though.</p> <p>4 MR. NEUWIRTH: It says -- the rest</p> <p>5 of the paragraph says: Please note that</p> <p>6 Michael Foods will be designating Gregg</p> <p>7 Ostrander as its 30(b)(6) witness regarding</p> <p>8 Michael Foods' decision to join the UEP</p> <p>9 Certified program in 2006. To the extent that</p> <p>10 this topic is intended to cover contacts with</p> <p>11 UEP related to the UEP Certified program prior</p> <p>12 to Michael Foods joining the program,</p> <p>13 Mr. Baker will provide testimony on that topic</p> <p>14 in response to topic 1 and topic 15 below.</p> <p>15 I've now read the whole paragraph.</p> <p>16 I'm not understanding what point you're trying</p> <p>17 to make. You have expressly stated, and by</p> <p>18 "you," I mean counsel for Michael Foods has</p> <p>19 expressly stated that Mr. Baker is</p> <p>20 specifically designated to testify regarding</p> <p>21 Michael Foods' implementation of the UEP</p> <p>22 Certified program. Are you now taking the</p> <p>23 position that that's not what he's been</p> <p>24 designated for?</p> <p>25 MR. GREENE: No, Mr. Neuwirth.</p>	<p style="text-align: right;">32</p> <p>1 Carrie Anderson put in her letter. And I'm</p> <p>2 going to ask it again and I hope it won't be</p> <p>3 obstructed again.</p> <p>4 BY MR. NEUWIRTH:</p> <p>5 Q. Mr. Baker, is it correct that you are</p> <p>6 here to testify with respect to topic 7 as a</p> <p>7 corporate representative concerning Michael</p> <p>8 Foods' implementation of the UEP Certified</p> <p>9 program?</p> <p>10 A. I don't have the letter. I don't</p> <p>11 remember what my topics were.</p> <p>12 Q. So you're sitting here today as a</p> <p>13 corporate representative and you don't</p> <p>14 remember what topics you've been designated to</p> <p>15 testify about?</p> <p>16 A. Not exactly, no.</p> <p>17 Q. And so you don't understand that you're</p> <p>18 here to testify about the implementation of</p> <p>19 the UEP Certified program?</p> <p>20 A. Not necessarily, no.</p> <p>21 Q. What other possibility in the universe do</p> <p>22 you think there is on that topic besides the</p> <p>23 one I just shared with you?</p> <p>24 MR. GREENE: Objection,</p> <p>25 argumentative.</p>
<p style="text-align: right;">31</p> <p>1 What I'm saying --</p> <p>2 MR. NEUWIRTH: And there's nothing</p> <p>3 in this letter which says that the word</p> <p>4 "implementation" is vague and ambiguous in any</p> <p>5 way, right?</p> <p>6 MR. GREENE: No. My comment was</p> <p>7 that since the company has written</p> <p>8 correspondence which explains what Mr. Baker</p> <p>9 has identified --</p> <p>10 (Mr. Rayle enters the deposition.)</p> <p>11 MR. GREENE: I'll just start again.</p> <p>12 Since the position of the company on the</p> <p>13 designation of 30(b)(6) is laid out in a -- in</p> <p>14 correspondence, that either that</p> <p>15 correspondence should be in front of the</p> <p>16 witness or, as you just did, you should read</p> <p>17 the entire paragraph associated with his</p> <p>18 designation.</p> <p>19 MR. NEUWIRTH: So are you taking</p> <p>20 the position that I'm not allowed to ask the</p> <p>21 witness what he understands he's here to</p> <p>22 testify on behalf of Michael Foods about?</p> <p>23 That seems to be what you're saying and you</p> <p>24 seem to be obstruct -- it was a simple</p> <p>25 question which was tracking verbatim what</p>	<p style="text-align: right;">33</p> <p>1 THE WITNESS: I don't know. I just</p> <p>2 know I was designated and I don't have that</p> <p>3 list in front of me to know which ones --</p> <p>4 BY MR. NEUWIRTH:</p> <p>5 Q. I just put it in front of you --</p> <p>6 A. Oh, okay.</p> <p>7 Q. -- and I'm asking you --</p> <p>8 A. If that's on that list, then I would</p> <p>9 agree that's --</p> <p>10 Q. Topic 7 is your participation in the UEP</p> <p>11 Certified program. And I'm asking you whether</p> <p>12 you're here to testify about Michael Foods</p> <p>13 implementation of the UEP Certified program?</p> <p>14 A. Apparently, yes.</p> <p>15 Q. You didn't know that before you walked in</p> <p>16 here?</p> <p>17 A. Well, I said I had a list. I saw a list</p> <p>18 of just my topics. I don't have the list in</p> <p>19 front of me. So I didn't recall exactly which</p> <p>20 ones I have, but I'm more than --</p> <p>21 Q. So if you're not sure what topics you</p> <p>22 were supposed to cover, what did you do to</p> <p>23 prepare for a topic related to the UEP</p> <p>24 Certified program? Did you know what you were</p> <p>25 supposed to prepare to testify about?</p>

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<p>1 A. I just know that topic. So --</p> <p>2 Q. What topic --</p> <p>3 A. I know my topics.</p> <p>4 Q. And which topic is it that you know as a</p> <p>5 corporate representative?</p> <p>6 A. Is my participation at UEP.</p> <p>7 Q. But that's not what you've been put</p> <p>8 forward to represent.</p> <p>9 A. Okay.</p> <p>10 Q. Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you understand that you're here as a</p> <p>13 corporate representative on certain topics</p> <p>14 beyond your personal representation?</p> <p>15 A. Yes.</p> <p>16 Q. And do you know -- do you know or do you</p> <p>17 not know that you are being put forth today as</p> <p>18 a corporate representative on the topic of</p> <p>19 UEP's implementation of the UEP Certified</p> <p>20 program?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So do you now acknowledge that</p> <p>23 that's a topic you're here to testify about?</p> <p>24 A. Yes.</p> <p>25 Q. And did you prepare to testify as a</p>	<p>1 deposition but wanted to note our objection to</p> <p>2 the purported designation of this witness to</p> <p>3 address the topic of Michael Foods'</p> <p>4 implementation of the UEP Certified program.</p> <p>5 MR. BARNES: Mr. Neuwirth, excuse</p> <p>6 my interruption. We've had someone, a guest</p> <p>7 join the deposition. I think it's appropriate</p> <p>8 if he states his appearance for the record.</p> <p>9 MR. NEUWIRTH: Certainly. Thank</p> <p>10 you.</p> <p>11 MR. MERRICK RAYLE: Merrick Rayle</p> <p>12 on behalf of the indirect purchasers.</p> <p>13 Who are you, sir?</p> <p>14 MR. BARNES: My name is Donald</p> <p>15 Barnes on behalf of Rose Acre Farms.</p> <p>16 MR. NEUWIRTH: Thank you,</p> <p>17 Mr. Barnes. I should have done that myself.</p> <p>18 Thank you.</p> <p>19 BY MR. NEUWIRTH:</p> <p>20 Q. Okay. If you look down the list to topic</p> <p>21 number 15, there's a topic: Your contacts</p> <p>22 with UEP's Scientific Advisory Committee.</p> <p>23 Do you understand that you're been</p> <p>24 designated as a corporate representative on</p> <p>25 the topic of any contacts that you, Mr. Baker,</p>
35	37
<p>1 corporate representative on that topic?</p> <p>2 A. Yes.</p> <p>3 Q. What did you do to prepare?</p> <p>4 A. I did nothing specific. I just --</p> <p>5 nothing to review. I just know that topic.</p> <p>6 Q. So you know that topic on behalf of every</p> <p>7 person in the company?</p> <p>8 A. No.</p> <p>9 MR. GREENE: Objection,</p> <p>10 argumentative.</p> <p>11 BY MR. NEUWIRTH:</p> <p>12 Q. So are you here to testify about your</p> <p>13 personal knowledge on that topic or Michael</p> <p>14 Foods' knowledge on that topic?</p> <p>15 A. I'm not clear -- I'm not sure how to</p> <p>16 answer that, I guess.</p> <p>17 MR. NEUWIRTH: Okay. Well, we're</p> <p>18 going to object that this witness is not</p> <p>19 prepared to be a 30(b)(6) witness on this</p> <p>20 topic because he's now acknowledged that he</p> <p>21 did nothing to prepare for this topic other</p> <p>22 than rely on his own personal knowledge. And</p> <p>23 he's just indicated that he doesn't even know</p> <p>24 how to answer the question that I just posed</p> <p>25 to him. So we're going to proceed with the</p>	<p>1 personally had with the Scientific Advisory</p> <p>2 Committee of the UEP?</p> <p>3 A. Yes.</p> <p>4 Q. And what did you do to prepare to serve</p> <p>5 as a corporate representative on that topic?</p> <p>6 A. Just my general experience and my</p> <p>7 attendance at most of these meetings.</p> <p>8 Q. So is it fair to say that for purposes of</p> <p>9 that topic you're relying on your recollection</p> <p>10 of events?</p> <p>11 A. Yes.</p> <p>12 Q. And then if you could turn to topic 23,</p> <p>13 which is: Your participation in any USEM</p> <p>14 export or decisions relating to any USEM</p> <p>15 export.</p> <p>16 Do you see that topic?</p> <p>17 A. Yes.</p> <p>18 Q. And do you understand that you've been</p> <p>19 designated as Michael Foods' corporate</p> <p>20 representative on that topic?</p> <p>21 A. Yes.</p> <p>22 Q. And what did you do to prepare to serve</p> <p>23 as Michael Foods' corporate representative on</p> <p>24 that topic?</p> <p>25 A. My general experience.</p>

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<p>1 Q. And so is it fair to say that other than 2 your own personal recollection, you've not 3 considered anything else in preparing for that 4 topic? 5 A. No. 6 Q. That's not correct? 7 A. No -- I'm sorry. Please repeat the 8 question. 9 Q. I'm sorry if it was unclear. Is it fair 10 to say -- let me just phrase it this way: Is 11 it correct that other than your own personal 12 recollection, you've not considered anything 13 else in preparing for this topic on 14 participation in any USEM export or decisions 15 relating to any USEM export? 16 A. Yes. 17 MR. NEUWIRTH: And so we would 18 object on topic number 23 as well, that 19 Mr. Baker has not done anything reasonable to 20 prepare to serve as USEM's corporate 21 representative on topic number 23, but we will 22 proceed as well here today. 23 MR. GREENE: We disagree, but your 24 objection is noted. 25 MR. NEUWIRTH: Okay.</p>	<p>1 A. Yes. 2 Q. And during what years were you serving on 3 the UEP board of directors? 4 A. 2004 to present. 5 Q. And throughout those years is it fair to 6 say that you've been a Michael Foods designee 7 on the board of directors of the UEP? 8 A. Yes. 9 Q. Do you know how board members of the UEP 10 are selected? 11 A. Yes, you are nominated from a regional 12 base. We -- coming out of the Midwest region, 13 which is the largest region of producers. 14 It's based on the number of layers in your 15 region. And so that's how the representatives 16 are designated. And so you're nominated from 17 the membership. There's a ballot process. 18 And then you are elected and seated in the 19 October annual meeting is the normal 20 procedure. 21 Q. And prior to 2004, was any employee of 22 Michael Foods serving on the board of 23 directors -- and let me rephrase it to say: 24 Immediately prior to your joining the board of 25 directors, was there anyone else from Michael</p>
39	41
<p>1 BY MR. NEUWIRTH: 2 Q. Now, do you know when Michael Foods 3 became a member of the UEP? 4 A. Not specifically. 5 Q. Was it a member of the UEP in 1977 when 6 you joined Michael Foods? 7 A. Yes, but it was not necessarily UEP. I 8 don't have specific recollection on -- there 9 were regional cooperatives in those days and 10 then eventually they came together to form UEP 11 and the Waldbaum Company was one of the 12 original founders of that particular group. 13 Q. And the Waldbaum company was a company 14 that later became known as Michael Foods? 15 A. It was acquired by Michael Foods in 1988 16 and 1990. 17 Q. And at the time of that acquisition in 18 the 1988, 1990 range that you've just 19 described, did you understand that Michael 20 Foods was already a member of the UEP at the 21 time of that acquisition? 22 A. I believe so, yes. 23 Q. And it's correct, isn't it, that a point 24 came where you had a position on the UEP board 25 of directors, correct?</p>	<p>1 Foods who had been serving on the board of 2 directors? 3 A. I don't think so. I'm not aware of 4 anybody in the immediate period preceding. 5 Q. Now, did you participate from 2004 to the 6 present in any committees of the board of 7 directors of the UEP? 8 A. Yes. 9 Q. And what committees have you participated 10 in during that time period? 11 A. I have been on the Government Relations 12 Committee, the Egg Safety Committee and the 13 Long Range Planning Committee. 14 Q. And what are the responsibilities as you 15 understand them of the Long Range Planning 16 Committee? 17 A. I think initially it was set up to be 18 kind of a strategic planning process, but it 19 really amounted to only two meetings and then 20 it disbanded or has not been in -- has not met 21 for several years now. And I don't even 22 recall the years exactly when it was -- when 23 we did have the two meetings. 24 Q. Do you remember what the subject matters 25 were of those two meetings?</p>

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<p>1 A. How we were going to go forward, talking</p> <p>2 about the cooperative, some about the</p> <p>3 organizational structures, but more about how</p> <p>4 best to proceed given the animal activism</p> <p>5 issues we were facing already. And that</p> <p>6 must've been at least in '06, '07, I'm</p> <p>7 guessing. So -- but a lot of it was just like</p> <p>8 how do we -- how to move forward and how do we</p> <p>9 survive.</p> <p>10 Q. Can I ask you if you could re-clip your</p> <p>11 microphone.</p> <p>12 A. Oh.</p> <p>13 Q. I know the videographer was concerned</p> <p>14 that it had fallen off.</p> <p>15 A. Sorry.</p> <p>16 Q. Thank you. And do you have any other</p> <p>17 recollection of topics that were discussed by</p> <p>18 the Long Range Planning Committee at the two</p> <p>19 meetings you attended?</p> <p>20 A. There was some discussion about the</p> <p>21 Capper-Volstead with -- part of that group</p> <p>22 was -- the counsel was -- UEP counsel at the</p> <p>23 point in time was in attendance. And so there</p> <p>24 was some discussion about Capper-Volstead.</p> <p>25 Q. And do you remember what was the subject,</p>	<p>1 specific.</p> <p>2 Q. Were any conclusions reached at that</p> <p>3 meeting that you can recall regarding</p> <p>4 Capper-Volstead?</p> <p>5 MR. DAVIS: I object. The question</p> <p>6 calls for discussions held with UEP counsel</p> <p>7 and asks for conclusions that were reached</p> <p>8 from discussions with UEP counsel.</p> <p>9 MR. GREENE: It's a yes-or-no</p> <p>10 question. Mr. Davis, do you agree that the</p> <p>11 witness can answer it yes or no?</p> <p>12 MR. DAVIS: If Mr. Neuwirth agrees</p> <p>13 that a yes-or-no answer would not be any form</p> <p>14 of a waiver to a follow-up question, then</p> <p>15 that's perfectly fine.</p> <p>16 MR. NEUWIRTH: I don't think</p> <p>17 there's ever a waiver to a follow-up question</p> <p>18 on this type of thing. So --</p> <p>19 MR. GREENE: Mr. Baker, I'm going</p> <p>20 to ask him to re-read the question. If it's a</p> <p>21 yes-or-no question, you can answer the</p> <p>22 question yes or no.</p> <p>23 Could you please re-read --</p> <p>24 MR. NEUWIRTH: And I'll just say</p> <p>25 I'm not agreeing it's a yes or-no-question,</p>
43	45
<p>1 the particular Capper-Volstead subject matter</p> <p>2 of that discussion?</p> <p>3 MR. DAVIS: This is Evan Davis. I</p> <p>4 object to the question as calling for UEP</p> <p>5 privileged information.</p> <p>6 MR. NEUWIRTH: Are you instructing</p> <p>7 the witness not to answer?</p> <p>8 MR. GREENE: Mr. Baker, UEP has</p> <p>9 objected to the extent it calls for privileged</p> <p>10 information. So I'm going to allow you to</p> <p>11 answer questions except for your</p> <p>12 communications with Mr. Haley. And if you had</p> <p>13 conversations with Mr. Haley, we want to give</p> <p>14 UEP a chance to object again. So separate and</p> <p>15 apart from your discussions with UEP counsel,</p> <p>16 you can go ahead and answer the question,</p> <p>17 otherwise I think we need to let UEP's counsel</p> <p>18 object again.</p> <p>19 BY MR. NEUWIRTH:</p> <p>20 Q. So do you recall the question that was</p> <p>21 pending?</p> <p>22 A. I don't know that there was any specific</p> <p>23 question. It was just more of a general</p> <p>24 discussion on membership and activities, I</p> <p>25 believe. I don't recall anything really that</p>	<p>1 but I'd agree that he can answer it yes or no</p> <p>2 to deal with the objection.</p> <p>3 MR. GREENE: Okay.</p> <p>4 MR. NEUWIRTH: I think I can just</p> <p>5 restate it because I think I remember it, but</p> <p>6 let me know if anyone has a different</p> <p>7 recollection of the question.</p> <p>8 BY MR. NEUWIRTH:</p> <p>9 Q. At these two meetings of the Long Range</p> <p>10 Planning Committee that you've referred to,</p> <p>11 were any conclusions reached that you can</p> <p>12 recall regarding Capper-Volstead?</p> <p>13 A. No, not that I recall.</p> <p>14 Q. And just to be clear, when you say not</p> <p>15 that you can recall, does that mean that you</p> <p>16 believe it's possible that conclusions may</p> <p>17 have been reached, but you just don't remember</p> <p>18 them at this point?</p> <p>19 A. I don't remember them in the meeting.</p> <p>20 Whether there were conclusions that happened</p> <p>21 at some other point where I wasn't there,</p> <p>22 maybe they came from that meeting, but not</p> <p>23 that I can remember.</p> <p>24 Q. Was there any discussion at the Long</p> <p>25 Range Planning Committee about the number of</p>

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<p>1 layers of hens that UEP members had at the</p> <p>2 present -- at that time?</p> <p>3 A. I don't -- I don't remember.</p> <p>4 Q. Do you know whether minutes of that long</p> <p>5 range plan -- of those Long Range Planning</p> <p>6 Committee meetings were kept?</p> <p>7 A. I don't recall that either.</p> <p>8 Q. Do you recall who were the members of the</p> <p>9 Long Range Planning Committee?</p> <p>10 A. I can remember maybe a couple.</p> <p>11 Q. Who do you remember?</p> <p>12 A. I think Jim Dean. I believe Craig</p> <p>13 Willardson from Moark. I think Roger Deffner</p> <p>14 from National Foods. Those are the only three</p> <p>15 that I remember specifically. I would be</p> <p>16 guessing if I -- I don't recall anybody else</p> <p>17 specifically.</p> <p>18 Q. And by whom is Mr. Dean employed, do you</p> <p>19 know?</p> <p>20 A. He is employed by the Center Fresh Group</p> <p>21 today.</p> <p>22 Q. And at the time of these meetings, do you</p> <p>23 recall who he was employed by?</p> <p>24 A. I think it would've been Center Fresh</p> <p>25 Group.</p>	<p>1 BY MR. NEUWIRTH:</p> <p>2 Q. Let me restate the question.</p> <p>3 A. Okay.</p> <p>4 Q. What is your understanding of why Michael</p> <p>5 Foods chooses to be a member of the UEA given</p> <p>6 your testimony that it's a small organization</p> <p>7 with a small membership?</p> <p>8 A. It's a question primarily of purpose.</p> <p>9 United Egg Producers is dedicated to the</p> <p>10 production side, the farm production side.</p> <p>11 UEA is focused on the processing and the</p> <p>12 regulatory issues associated with the</p> <p>13 processing side of it with USDA, FSIS and</p> <p>14 those kinds of concerns. So there's two</p> <p>15 different definite focuses there.</p> <p>16 Q. Now, do you feel generally familiar from</p> <p>17 your years of experience with the egg</p> <p>18 processing business in the United States?</p> <p>19 A. I'm sorry --</p> <p>20 MR. GREENE: Objection, vague.</p> <p>21 THE WITNESS: Can you repeat the</p> <p>22 question?</p> <p>23 BY MR. NEUWIRTH:</p> <p>24 Q. Well, you referred to the fact that the</p> <p>25 UEA focuses mainly on processing of eggs,</p>
47	49
<p>1 Q. Is Michael Foods a member of the UEA?</p> <p>2 A. Yes.</p> <p>3 Q. And what is your understanding of the</p> <p>4 relationship between the UEP and the UEA?</p> <p>5 MR. DAVIS: Objection, lacks</p> <p>6 foundation.</p> <p>7 BY MR. NEUWIRTH:</p> <p>8 Q. Do you understand that there is a</p> <p>9 relationship between the UEP and the UEA?</p> <p>10 A. Yes.</p> <p>11 Q. And what is your understanding of that</p> <p>12 relationship?</p> <p>13 A. The relationship as I know it is that</p> <p>14 it's of shared resources. Strictly from a</p> <p>15 financial standpoint, it's a very small</p> <p>16 organization with not a lot of membership and</p> <p>17 so we do share some resources.</p> <p>18 Q. Now, given that the UEA is, as you've</p> <p>19 described, a small organization with a small</p> <p>20 membership, why does Michael Foods bother to</p> <p>21 be a member of the UEA, if you know?</p> <p>22 MR. GREENE: Objection to the form</p> <p>23 of the question.</p> <p>24 Go ahead.</p> <p>25 THE WITNESS: The --</p>	<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Is -- to your knowledge, across the</p> <p>4 United States is there a smaller number of</p> <p>5 companies involved in egg processing than</p> <p>6 there is involved in producing eggs?</p> <p>7 A. Yes.</p> <p>8 Q. It's correct, isn't it, that between 2004</p> <p>9 and the present the UEP has made</p> <p>10 recommendations to producers suggesting that</p> <p>11 they reduce the size of their flocks, correct?</p> <p>12 MR. DAVIS: Objection to form.</p> <p>13 BY MR. NEUWIRTH:</p> <p>14 Q. You can answer.</p> <p>15 A. Yes.</p> <p>16 Q. And you recall that that's periodically</p> <p>17 happened?</p> <p>18 A. Yes.</p> <p>19 Q. And is it correct that one of the methods</p> <p>20 for reducing flock size is to adjust the</p> <p>21 timing of molting of flocks?</p> <p>22 A. Yes.</p> <p>23 Q. And that another method is to adjust the</p> <p>24 timing when companies dispose of spent hens?</p> <p>25 A. Yes.</p>

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<p>1 Q. Let me give you a document that we will</p> <p>2 mark as Baker Exhibit 2. And this is minutes</p> <p>3 of a United Egg Producers board of directors</p> <p>4 meeting from May 11th to 12th, 2004.</p> <p>5 MS. KASOWITZ: Can we get the Bates</p> <p>6 numbers?</p> <p>7 MR. NEUWIRTH: Yes, the Bates</p> <p>8 number is UE, I believe, 0153273 through 276.</p> <p>9 MS. KASOWITZ: Thank you.</p> <p>10 MR. NEUWIRTH: And I will -- if I</p> <p>11 ever fail to do a Bates number, please let me</p> <p>12 know and I will try to do it all on my own</p> <p>13 initiative.</p> <p>14 (Exhibit Number 2 marked for</p> <p>15 identification.)</p> <p>16 BY MR. NEUWIRTH:</p> <p>17 Q. So, Mr. Baker, take whatever time you</p> <p>18 need to look at this. But my first question</p> <p>19 is whether this is a document you recognize?</p> <p>20 A. (Reviews document.) Yes.</p> <p>21 Q. And what do you recognize this as?</p> <p>22 A. The minutes from the May 11-12, 2004 UEP</p> <p>23 board of directors meeting in D.C.</p> <p>24 Q. And this is a meeting you attended,</p> <p>25 correct?</p>	<p>1 carry through until August 1st, 2004.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see that it says that that</p> <p>5 motion carried?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall whether you voted in favor</p> <p>8 of that motion?</p> <p>9 A. No -- I mean, yes, I do recall. And I</p> <p>10 did not vote for this motion.</p> <p>11 Q. What was the reason that you did not vote</p> <p>12 for this motion?</p> <p>13 A. As Michael Foods, we did not support the</p> <p>14 Marketing Committee activities, did not -- we</p> <p>15 did not participate in any of these activities</p> <p>16 and we never voted for these. And the minutes</p> <p>17 don't suggest that. It says: Carried. But I</p> <p>18 never -- we never voted for. If anything, it</p> <p>19 was we didn't vote at all or we voted against</p> <p>20 it. But we did not participate and it was not</p> <p>21 a -- it was not anything we usually supported</p> <p>22 or ever supported.</p> <p>23 Q. Now, when you say that you did not</p> <p>24 support the Marketing Committee activities,</p> <p>25 what Marketing Committee activities are you</p>
51	53
<p>1 A. Yes.</p> <p>2 Q. And let me ask you if you can turn to the</p> <p>3 second page of this document which ends in the</p> <p>4 Bates number -- which has the Bates number</p> <p>5 ending 274. And do you see that there is a</p> <p>6 reference about two-thirds of the way down the</p> <p>7 page to the Marketing Committee?</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. In 2004, were you a member of the UEP</p> <p>11 Marketing Committee?</p> <p>12 A. No.</p> <p>13 Q. Okay. And is it correct that at that</p> <p>14 time Dolph Baker from Cal-Maine was the</p> <p>15 chairman of that committee?</p> <p>16 A. I don't know. The minutes say he was.</p> <p>17 Q. But you have no independent recollection?</p> <p>18 A. No.</p> <p>19 Q. Okay. And do you see that there's a --</p> <p>20 it says that there was a motion that's listed</p> <p>21 there stating: It was moved by Baker and</p> <p>22 seconded by Fortin to recommend that the</p> <p>23 industry molt all flocks at 62 weeks and</p> <p>24 dispose of spent hens by 108 weeks and that</p> <p>25 this plan of action take place immediately and</p>	<p>1 referring to?</p> <p>2 A. Primarily these types of activities</p> <p>3 represented by the motion in question.</p> <p>4 Q. And by "these types of activities," you</p> <p>5 mean efforts to reduce flock size?</p> <p>6 A. Yes. Or for that matter, I don't think</p> <p>7 we supported or really were interested in</p> <p>8 hardly any of the marketing activities,</p> <p>9 whether they -- you know, data they reported</p> <p>10 on markets his -- I mean, we just -- it was</p> <p>11 really a committee or an area where we just</p> <p>12 did not focus that was not of material</p> <p>13 importance sort of stuff.</p> <p>14 Q. Well, according to these minutes, after</p> <p>15 the heading Marketing Committee, it says:</p> <p>16 Committee Chairman Dolph Baker presented the</p> <p>17 committee report and identified pending</p> <p>18 problems for the financial stability of the</p> <p>19 industry if some minor supply adjustments were</p> <p>20 not made very quickly.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Now, you've -- is it your position that</p> <p>24 Michael Foods did not consider the financial</p> <p>25 stability of the industry to be important?</p>

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<p>1 A. From the standpoint -- this is primarily 2 a shell egg, a retail shell egg issue, which 3 we are not involved with materially. So 4 that's why it really is an issue or again a 5 committee that just does not -- something that 6 we put a lot of effort or focus onto, I have 7 to admit. 8 Q. Well, you say that it's not -- you didn't 9 abstain, you say you voted no? 10 A. Yes. 11 Q. Why would you vote no simply because this 12 was not something, to use your words, that 13 Michael Foods was materially involved with? 14 A. We just didn't -- I just never agreed 15 with these kind -- that these methods ever 16 really fixed anything. They were 17 short-term -- in my opinion, they were 18 short-term things that didn't necessarily fix 19 the problem anyway or their issue. So we 20 just -- and in our business, we're a 21 liquid -- we're primarily egg products. We 22 focus on having products for our customers 23 and they're completely -- there's a tie, but 24 they're still very unrelated in a lot -- in 25 many ways to this retail shell segment. So --</p>	<p>1 A. Yes. 2 Q. You just told me that you disagreed with 3 what Mr. Baker recommended at this meeting, 4 correct? 5 A. Yes. 6 Q. And do you see that there's a description 7 here that I just read to you which says, 8 "Committee Chairman Dolph Baker presented the 9 committee report and identified pending 10 problems for the financial stability of the 11 industry if some minor supply adjustments were 12 not made very quickly"? 13 You see that, right? 14 A. Yes. 15 Q. And you've told me today you disagreed 16 with that, correct? 17 A. Yes. 18 Q. Do you think that what I just read to you 19 is vague in some way that you can't understand 20 what it means? 21 A. No, I understand what he was meaning. 22 Q. Okay. So now my question again is: Did 23 you believe that as of May 11th to 12th, 2004 24 it was correct, as stated here in these 25 minutes that you just looked at, that there</p>
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<p>1 Q. Well, it's one thing -- you agree that 2 it's one thing to consider something 3 unimportant and it's yet another thing to 4 affirmatively vote against something? 5 A. Yes. 6 Q. So I take it that -- from your testimony 7 today that it -- that in addition to something 8 that was not important to Michael Foods, 9 according to your testimony, this was also 10 something that you affirmatively disagreed 11 with in terms of this particular type of 12 recommendation? 13 A. Yes. 14 Q. And did you agree, even if it was not 15 materially important to Michael Foods' 16 business, that as of May 2004 there were 17 pending problems for the financial stability 18 of the industry as referenced in this 19 document? 20 MR. GREENE: Well, objection, 21 vague. 22 BY MR. NEUWIRTH: 23 Q. Do you think that the -- do you see 24 here -- you were a member of the UEP board, 25 right?</p>	<p>1 were pending problems for the financial 2 stability of the industry if some minor supply 3 adjustments were not made very quickly? 4 A. I don't remember the specifics of the 5 supply and the situation at this moment in 6 time. And again, in the egg products industry 7 it's a different issue for that segment of the 8 industry. So again, not -- I'm not sure how 9 to answer your question, I guess, because it's 10 just something we just -- I don't know. We 11 just -- it was not a material thing for us. 12 Q. Right. So just to be clear, you've said 13 that these issues related to production of 14 eggs for sale at retail were not material to 15 your business, is that right? 16 A. Yes. Yes, they a very small segment of 17 our overall business model. 18 Q. And the larger segment of your overall 19 business model, I take it, was, as you've 20 said, processing? 21 A. Yes, egg products. 22 Q. Right. Now, you've testified today that 23 the UEP is focused primarily on production, 24 while the UEA is focused primarily on 25 processing, right?</p>

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<p>1 A. Yes.</p> <p>2 Q. And yet since 2004 you've been a member</p> <p>3 of the board of directors of the UEP, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And if production of eggs is, to use your</p> <p>6 phrase, not a material part of Michael Foods'</p> <p>7 business, why are you on the board of the UEP?</p> <p>8 MR. GREENE: Object to the</p> <p>9 characterization.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: We are egg producers.</p> <p>12 That's why we're on United Egg Producers'</p> <p>13 board. And there are many issues related to</p> <p>14 the UEP organization that relate to obviously</p> <p>15 egg producers. What this issue is about is</p> <p>16 about marketing and selling retail shell eggs.</p> <p>17 BY MR. NEUWIRTH:</p> <p>18 Q. Does Michael Foods not sell any retail</p> <p>19 shell eggs?</p> <p>20 A. Yes, we do.</p> <p>21 Q. And what percentage of -- well, let me</p> <p>22 ask: Do you know what percentage of Michael</p> <p>23 Foods' revenues typically come from the retail</p> <p>24 sale of shell eggs -- or the sale of shell</p> <p>25 eggs -- the sale -- let me rephrase that.</p>	<p>1 against this resolution from the Marketing</p> <p>2 Committee that was referenced on the second</p> <p>3 page of these May 11th to 12th, 2004 board of</p> <p>4 directors minutes, correct?</p> <p>5 A. Yes. And --</p> <p>6 Q. After the resolution --</p> <p>7 MR. GREENE: Were you done with</p> <p>8 your answer?</p> <p>9 THE WITNESS: Yeah, may I add? I</p> <p>10 don't know that I specifically voted no. In</p> <p>11 many cases I may not have even been in the</p> <p>12 room. I don't know at this particular</p> <p>13 meeting. Because if you had -- if there was</p> <p>14 something that I needed to do, a different</p> <p>15 phone call, this would've been the opportunity</p> <p>16 I would've used to go take care of something</p> <p>17 and leave the meeting moment -- for a while.</p> <p>18 So I don't know that I can even -- I don't</p> <p>19 know if I was in the room when this motion was</p> <p>20 voted on. But I know I didn't vote against it</p> <p>21 if I was there. But I don't know if I was</p> <p>22 even in the room because oftentimes we left</p> <p>23 the room if this was the topic because we did</p> <p>24 not participate, as I said, in this committee.</p> <p>25 BY MR. NEUWIRTH:</p>
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<p>1 Do you know what percentage of Michael</p> <p>2 Foods' revenues typically come from the sale</p> <p>3 of shell eggs for retail sale?</p> <p>4 A. I do not.</p> <p>5 Q. So how do you know it's immaterial?</p> <p>6 A. I just know it's a small number, but I</p> <p>7 don't know the exact number.</p> <p>8 Q. And does Michael Foods -- is Michael</p> <p>9 Foods a public company?</p> <p>10 A. No.</p> <p>11 Q. Does Michael Foods do any sort of</p> <p>12 reporting to investors to your knowledge?</p> <p>13 A. I'm not -- I'm not familiar exactly with</p> <p>14 what the reporting requirements are for us.</p> <p>15 Q. Do you ever participate -- does Michael</p> <p>16 Foods have a board of directors?</p> <p>17 A. Yes.</p> <p>18 Q. Do you ever attend meetings of the</p> <p>19 Michael Foods board of directors?</p> <p>20 A. No, I do not.</p> <p>21 Q. Do you ever attend meetings of senior</p> <p>22 management of Michael Foods?</p> <p>23 A. No, not necessarily. I should say on</p> <p>24 occasion, but very rare.</p> <p>25 Q. Okay. Now, you've said that you voted</p>	<p>1 Q. So you're now withdrawing your earlier</p> <p>2 testimony that you recall voting against it?</p> <p>3 A. Well, yes -- well, I think I -- I don't</p> <p>4 know specifically that I voted against this</p> <p>5 motion. I voted against most -- some of these</p> <p>6 motions over the years, but there was</p> <p>7 multiples that these happened. I don't</p> <p>8 remember that it was this one specifically,</p> <p>9 because oftentimes, as I say, I was out of the</p> <p>10 room maybe when these -- these things were up.</p> <p>11 So --</p> <p>12 Q. So are you withdrawing your testimony</p> <p>13 that you gave earlier today that you voted</p> <p>14 against this motion?</p> <p>15 MR. GREENE: Objection,</p> <p>16 argumentative.</p> <p>17 MR. NEUWIRTH: It's not</p> <p>18 argumentative.</p> <p>19 BY MR. NEUWIRTH:</p> <p>20 Q. I'm just asking you --</p> <p>21 A. Well, I --</p> <p>22 Q. -- based on your testimony --</p> <p>23 A. Okay.</p> <p>24 Q. -- that you've just given, you are</p> <p>25 withdrawing your testimony from earlier today</p>

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<p>1 that you voted against this motion?</p> <p>2 MR. GREENE: Objection.</p> <p>3 THE WITNESS: Okay. I'm not</p> <p>4 certain. You can look -- we can look at the</p> <p>5 transcript. I thought I said -- when I</p> <p>6 answered your question initially, I thought my</p> <p>7 answer was I either voted no or didn't vote at</p> <p>8 all was what I thought I answered. So that's</p> <p>9 why I just wanted to clarify because you keep</p> <p>10 referring to -- saying I voted no. And that's</p> <p>11 what I wanted to clarify. Because if I didn't</p> <p>12 say that right the first time, then I am -- I</p> <p>13 would like to correct that. But I thought</p> <p>14 that's what my answer was the very first time</p> <p>15 was -- it was either I didn't vote at all or I</p> <p>16 voted no.</p> <p>17 BY MR. NEUWIRTH:</p> <p>18 Q. Now, after this resolution passed at the</p> <p>19 UEP board meeting, did Michael Foods carry out</p> <p>20 what was requested in this resolution?</p> <p>21 A. No.</p> <p>22 Q. So you just ignored it, by "you," I mean</p> <p>23 Michael Foods just ignored it?</p> <p>24 A. Yes, just ignored it.</p> <p>25 Q. Now, with respect -- one more question</p>	<p>1 MS. TURNER-DODGE: MFI0615604</p> <p>2 through 609.</p> <p>3 (Exhibit Number 3 marked for</p> <p>4 identification.)</p> <p>5 BY MR. NEUWIRTH:</p> <p>6 Q. And can you let me know once you've had a</p> <p>7 chance to look at this document whether it's</p> <p>8 something that you've seen before?</p> <p>9 A. (Reviews document.) It's been a while,</p> <p>10 but I think I have seen it, yes.</p> <p>11 Q. Right. And is it correct that this is a</p> <p>12 letter that UEP's chairman and senior vice</p> <p>13 president, Mr. Deffner and Mr. Gregory, sent</p> <p>14 to you on November 19th, 2004?</p> <p>15 A. Yes.</p> <p>16 Q. And do you see that the first line of the</p> <p>17 letter says that UEP hosted an egg industry</p> <p>18 economic summit in Atlanta on November 16th</p> <p>19 and you missed it?</p> <p>20 A. Yes.</p> <p>21 Q. Let me ask you if you can turn to the</p> <p>22 second page of the letter. Do you see that it</p> <p>23 says, "We then asked the..." -- this is at the</p> <p>24 bottom of the page: We then asked the</p> <p>25 attendees if they wanted to be part of the,</p>
63	65
<p>1 about this resolution. It says that the</p> <p>2 resolution was seconded by Fortin.</p> <p>3 Do you know who Fortin is?</p> <p>4 A. I would think that was Joe Fortin.</p> <p>5 Q. Right. There's a reference to Joe Fortin</p> <p>6 on the first page of the document.</p> <p>7 Do you know what company he was with?</p> <p>8 A. He was with Moark, I believe.</p> <p>9 Q. Now, do you recall that there was in 2004</p> <p>10 an egg industry economic summit in Atlanta?</p> <p>11 A. Yes.</p> <p>12 Q. And did you attend that summit?</p> <p>13 A. No, I did not personally attend.</p> <p>14 Q. And do you recall why you did not attend?</p> <p>15 A. I don't recall why I didn't attend.</p> <p>16 Q. Do you know whether anybody from Michael</p> <p>17 Foods attended?</p> <p>18 A. Toby Catherman who reported to me and was</p> <p>19 based in Pennsylvania covered that meeting and</p> <p>20 I think he was in attendance.</p> <p>21 Q. Okay. And let me show you a document</p> <p>22 that we'll mark as Baker Exhibit 3. This</p> <p>23 bears Bates numbers MF --</p> <p>24 MR. NEUWIRTH: Can I have someone</p> <p>25 else read this number?</p>	<p>1 quote, solution, close quote, in managing the</p> <p>2 supply to meet an expected demand.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see it then says, "We offered</p> <p>6 the two options that are now enclosed with</p> <p>7 this letter"?</p> <p>8 A. (Reviews document.)</p> <p>9 Q. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that at the back of the letter</p> <p>12 the last two pages refer to an option 1 and an</p> <p>13 option 2?</p> <p>14 Do you see that?</p> <p>15 A. (Reviews document.) Yes.</p> <p>16 Q. What was your reaction, if you recall it,</p> <p>17 to the two options that the UEP had presented</p> <p>18 to UEP members that are included with this</p> <p>19 letter?</p> <p>20 A. It was a similar to like the motion</p> <p>21 (indicating) that was made in the spring of</p> <p>22 2004. Again, it is something that -- it was</p> <p>23 just a little different spin with they were</p> <p>24 trying to, I think, bring accountability to</p> <p>25 their membership to try to -- or try to bring</p>

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<p>1 accountability to this option. We didn't</p> <p>2 follow these options. So it didn't do</p> <p>3 anything to us -- or, I mean, we didn't -- we</p> <p>4 just ignored it as we normally did all of</p> <p>5 those types of motions. So --</p> <p>6 Q. And did you -- did you agree with -- if</p> <p>7 you go back to page 2 and you -- you see that</p> <p>8 line we looked at? "We then asked the</p> <p>9 attendees if they wanted to be part of the</p> <p>10 solution in managing the supply to meet an</p> <p>11 expected demand." Did you understand that one</p> <p>12 of the objectives of at least the people who</p> <p>13 wrote this letter, Mr. Deffner and</p> <p>14 Mr. Gregory, was to have UEP members manage</p> <p>15 the supply of shell eggs?</p> <p>16 A. No, I do not.</p> <p>17 MR. DAVIS: Objection, calls for</p> <p>18 speculation.</p> <p>19 MR. NEUWIRTH: I'm asking his</p> <p>20 understanding.</p> <p>21 BY MR. NEUWIRTH:</p> <p>22 Q. Did you have an understanding that that</p> <p>23 was one of the objectives?</p> <p>24 MR. DAVIS: Same objection, calls</p> <p>25 for speculation.</p>	<p>1 Q. Let me give you a document bearing the</p> <p>2 Bate -- that starts with the Bates MFI0043142</p> <p>3 and ends with that. It's a single page. And</p> <p>4 let's mark that as Baker Exhibit 4.</p> <p>5 (Exhibit Number 4 marked for</p> <p>6 identification.)</p> <p>7 BY MR. NEUWIRTH:</p> <p>8 Q. Do you see that this is -- at the top of</p> <p>9 the page there is an email message from Vince</p> <p>10 O'Brien to you?</p> <p>11 A. (Reviews document.) Yes.</p> <p>12 Q. And who is Vince O'Brien?</p> <p>13 A. Vince O'Brien was our vice</p> <p>14 president/general manager of our food</p> <p>15 ingredient channel, I think, at this stage.</p> <p>16 Q. Okay. Is he still with Michael Foods?</p> <p>17 A. Yes, he is.</p> <p>18 Q. And what is his current position?</p> <p>19 A. He's the vice president/general manager</p> <p>20 of the food ingredient channel.</p> <p>21 Q. And what products are within the scope of</p> <p>22 food ingredients at Michael Foods?</p> <p>23 A. Primarily it would be dry products,</p> <p>24 frozen, short-shelf-life-liquid-type products.</p> <p>25 But they actually sell any of our product</p>
67	69
<p>1 THE WITNESS: No, I did not.</p> <p>2 BY MR. NEUWIRTH:</p> <p>3 Q. What did you understand was being</p> <p>4 referred to in this line that refers to</p> <p>5 managing the supply to meet an expected</p> <p>6 demand? Did you understand it to mean a</p> <p>7 supply other than shell eggs?</p> <p>8 A. Oh. You mean after the letter. I</p> <p>9 thought -- maybe I misunderstood the question.</p> <p>10 I thought you were asking before going into</p> <p>11 the meeting if we understood that was the --</p> <p>12 Q. No, no, no. I'm asking --</p> <p>13 A. Oh.</p> <p>14 Q. -- when you received -- let me -- I'm</p> <p>15 sorry if that was unclear. When you received</p> <p>16 this letter, did you understand that one of</p> <p>17 the objectives of at least Mr. Deffner and</p> <p>18 Mr. Gregory was to have UEP members manage the</p> <p>19 supply of shell eggs?</p> <p>20 A. Coming --</p> <p>21 MR. DAVIS: Objection, calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: Coming out of the</p> <p>24 meeting, yes, that was quite clear. Yes.</p> <p>25 BY MR. NEUWIRTH:</p>	<p>1 line. It's more based on who the users are or</p> <p>2 the purpose of what the egg is being consumed.</p> <p>3 Q. And in your role did you work closely</p> <p>4 with Mr. O'Brien on a day-to-day basis as of</p> <p>5 August 2005?</p> <p>6 A. Yes, we had some inter -- fairly regular</p> <p>7 interaction because of the type of marketing,</p> <p>8 selling, the relationship to markets and</p> <p>9 things they were doing.</p> <p>10 Q. And do you see that in his email he</p> <p>11 asks -- he says to you: Is that second to</p> <p>12 last paragraph a true statement?</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And do you agree that what he's referring</p> <p>16 to is the second to last paragraph of the</p> <p>17 email that he is forwarding to you?</p> <p>18 A. Yes.</p> <p>19 Q. And that's an email that a Mark Witmer</p> <p>20 sent to a group of recipients including</p> <p>21 Mr. O'Brien, correct?</p> <p>22 A. Yes, appears to be true. Yes.</p> <p>23 Q. And is Mark Witmer, if I'm reading his</p> <p>24 name correctly, someone at Michael Foods?</p> <p>25 A. Yes, he was an MFI employee.</p>

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<p>1 Q. And what was his role as of 2005, if you 2 recall?</p> <p>3 A. I'm not sure. He was in our corporate 4 staff, but I don't recall what his exact title 5 was.</p> <p>6 Q. And what he was forwarding to you was 7 what looks to be an AP story with the heading 8 Cal-Maine Foods Slides to 4Q Loss.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And then looking at the second to last 12 paragraph, it says -- and I -- it looks like 13 this is cut off, but I believe it says: The 14 company said the egg industry has since taken 15 action to reduce the size of laying flocks and 16 the supply of eggs, and as a result, egg 17 prices have recovered over the last six or 18 seven weeks.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. At the time Mr. O'Brien asked you if that 22 second to last paragraph is a true statement, 23 did you understand that second to last 24 paragraph to be a true statement?</p> <p>25 A. You know, I don't know, don't know the</p>	<p>1 THE WITNESS: No, I do not.</p> <p>2 BY MR. NEUWIRTH:</p> <p>3 Q. Now, you'll recall that you testified 4 earlier about the fact that the UEP 5 periodically would send recommendations on 6 having members reduce flock sizes, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Let me show you a document bearing the 9 Bates number MF10110364. And we'll mark that 10 as Exhibit 5, Baker Exhibit 5.</p> <p>11 (Exhibit Number 5 marked for 12 identification.)</p> <p>13 BY MR. NEUWIRTH:</p> <p>14 Q. And do you see that this is an email that 15 Gene Gregory of the UEP sent to you and a 16 number of other people on December 8th, 2006?</p> <p>17 A. (Reviews document.) Yes.</p> <p>18 Q. And do you see that the subject is 19 Supply/Demand?</p> <p>20 A. Yes.</p> <p>21 Q. Now, from looking at the list of 22 recipients of this email, do you understand 23 this to be an email from Mr. Gregory to 24 members of the UEP board?</p> <p>25 A. I don't know for certain. But it appears</p>
71	73
<p>1 exact details at this moment in time, whether 2 we agreed, disagreed or had an opinion.</p> <p>3 Q. Do you have any understanding of why 4 Mr. O'Brien was asking you whether this was a 5 true statement?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you have any understanding of why 8 information about a reduction of flock size by 9 Cal-Maine would've been of interest to 10 Mr. O'Brien?</p> <p>11 MR. GREENE: Objection, calls for 12 speculation.</p> <p>13 MR. DAVIS: Objection, 14 mischaracterizes the document.</p> <p>15 BY MR. NEUWIRTH:</p> <p>16 Q. The document says, doesn't it, that the 17 company said the egg industry has since taken 18 action to reduce the size of laying flocks and 19 the supply of eggs?</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding of why that 23 would have been of interest to Mr. O'Brien 24 sufficient to cause him to ask you about it?</p> <p>25 MR. GREENE: Same objection.</p>	<p>1 that would be what this was, but I can't 2 confirm.</p> <p>3 Q. Now, do you see that in the -- in the 4 final three paragraphs of this letter 5 Mr. Gregory writes: We suggest at that date 6 or by about December 17th, that shell egg 7 producers molt or slaughter any flock that was 8 scheduled for late December or during January. 9 Moving up your molt or slaughter schedule a 10 couple of weeks could pay big dividends. 11 Let's maintain these profitable prices.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know whether Michael Foods 15 followed this -- these suggestions, that shell 16 egg producers molt or slaughter any flock that 17 was scheduled for late December or during 18 January by about December 17th?</p> <p>19 A. Can you -- can you repeat that again?</p> <p>20 Q. Sure. Do you see that there is a 21 recommendation -- or a suggestion here by 22 Mr. Gregory that shell egg producers molt or 23 slaughter any flock that was scheduled for 24 late December or during January by about 25 December 17th?</p>

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<p>1 A. I guess I'm still not -- are you asking</p> <p>2 did we do what he's asking us to do?</p> <p>3 Q. Well, I'm asking first: Do you see this</p> <p>4 is what he suggested?</p> <p>5 A. Oh, okay. Yes, I see it.</p> <p>6 Q. And then the next question is: Do you</p> <p>7 understand that Michael Foods did or did not</p> <p>8 follow that recommendation?</p> <p>9 A. No, we did not follow that</p> <p>10 recommendation.</p> <p>11 Q. And do you recall at the time any</p> <p>12 decision-making process at Michael Foods with</p> <p>13 respect to this recommendation?</p> <p>14 A. No. It's (indicating).</p> <p>15 Q. Was it something that Michael Foods</p> <p>16 would've just ignored?</p> <p>17 A. Yes.</p> <p>18 Q. And I see you lifting your hand. Is that</p> <p>19 supposed to be a signal like throwing it to</p> <p>20 the trash bin?</p> <p>21 A. Well, it -- we file it. That would be</p> <p>22 it.</p> <p>23 Q. Now, are you familiar with the UEP</p> <p>24 Certified program?</p> <p>25 A. Yes.</p>	<p>1 a customer -- one major customer, national</p> <p>2 account who was looking at animal welfare, the</p> <p>3 Burger King Corporation, in 2002, in that --</p> <p>4 around that time period. And so we knew what</p> <p>5 they wanted. And they had a specific program</p> <p>6 of their own that we implemented in 2002. But</p> <p>7 as it related to ACC, we just were unclear yet</p> <p>8 at that point what the demand was because we</p> <p>9 knew there was a cost associated and we</p> <p>10 weren't sure how you would recover that cost</p> <p>11 if there was no -- you know, we were looking</p> <p>12 for customer demand because, again, most of</p> <p>13 our model has always been customer choice.</p> <p>14 Q. And what is the reason why Michael Foods</p> <p>15 gives priority to customer choice?</p> <p>16 A. It's just been kind of one of our</p> <p>17 philosophies for a long -- many, many -- a</p> <p>18 long time actually.</p> <p>19 Q. And do you have an understanding of why</p> <p>20 that's been a philosophy of the company for a</p> <p>21 long time?</p> <p>22 A. We just try to be customer centric, I</p> <p>23 guess. I'm -- I don't know if there's</p> <p>24 anything other than that. But, I mean, I</p> <p>25 think we've just always tried to focus on the</p>
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<p>1 Q. And did that program go by the acronym</p> <p>2 ACC at some earlier point?</p> <p>3 A. Early on -- I think in the early years it</p> <p>4 did and then it changed -- was changed later</p> <p>5 to the UEP Certified.</p> <p>6 Q. Now, it's correct that -- isn't it, that</p> <p>7 Michael Foods did not apply to join that</p> <p>8 program -- and by that I mean certified</p> <p>9 program, which may have been called ACC at the</p> <p>10 time. Michael Foods did not apply to join</p> <p>11 that program when it was first started,</p> <p>12 correct?</p> <p>13 A. Yes, that's correct.</p> <p>14 Q. And were you involved in Michael Foods'</p> <p>15 decision not to apply to join that program</p> <p>16 when it was started?</p> <p>17 A. Wasn't my decision, but it was in part of</p> <p>18 a group where we discussed it.</p> <p>19 Q. And what is your understanding of why</p> <p>20 Michael Foods chose not to join the certified</p> <p>21 program when it was first started?</p> <p>22 A. Our initial response was that -- our</p> <p>23 business model has always been all about</p> <p>24 customer choice and at the outset we were not</p> <p>25 sure what the demand was going to be. We had</p>	<p>1 customer and let the marketplace -- I mean,</p> <p>2 we're free market people. So we would prefer</p> <p>3 to let the market take these -- give you the</p> <p>4 direction and would tell us where to go.</p> <p>5 Q. And is that one of the reasons why</p> <p>6 Michael Foods was concerned about the feature</p> <p>7 of the certified program when it was started</p> <p>8 that required 100 percent compliance of all</p> <p>9 company production facilities in order to</p> <p>10 participate in the program?</p> <p>11 A. Is that why we were concerned? Yes.</p> <p>12 Yes.</p> <p>13 Q. And is it correct that Michael Foods felt</p> <p>14 that the 100 percent compliance requirement of</p> <p>15 the certification program would create costs</p> <p>16 that Michael Foods might need to pass on to</p> <p>17 its customers?</p> <p>18 MR. GREENE: Object to the form and</p> <p>19 lack of foundation.</p> <p>20 BY MR. NEUWIRTH:</p> <p>21 Q. You can answer.</p> <p>22 A. Yes, that would be accurate.</p> <p>23 Q. Now, do you recall that in roughly 2003</p> <p>24 the UEP's Animal Welfare Committee approved a</p> <p>25 policy allowing non-certified producers to</p>

20 (Pages 74 to 77)

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<p>1 purchase and market certified eggs?</p> <p>2 A. Yes, I'm aware of that.</p> <p>3 Q. And is it correct that this policy would</p> <p>4 enable a producer like Michael Foods to</p> <p>5 purchase and sell certified eggs only to meet</p> <p>6 customer demand?</p> <p>7 A. Yes.</p> <p>8 Q. And did Michael Foods choose to take</p> <p>9 advantage of this feature of the animal -- I'm</p> <p>10 sorry, the certified program that was adopted</p> <p>11 in roughly 2003?</p> <p>12 A. No.</p> <p>13 Q. And what was the reason that Michael</p> <p>14 Foods did not choose to participate in that?</p> <p>15 A. We were -- we were meeting with many</p> <p>16 customers that had interest and we just were</p> <p>17 looking for that customer -- for somebody to</p> <p>18 actually pull the trigger, so to speak, to</p> <p>19 exercise that program or that option that they</p> <p>20 had provided us. And so we had every</p> <p>21 intention of doing that, you know, in 2003. I</p> <p>22 think that sounds right.</p> <p>23 Q. Right. And is what you're saying that it</p> <p>24 turned out that at least at that point in time</p> <p>25 you didn't have any customer demand that would</p>	<p>1 And so they, of course, were -- those -- we</p> <p>2 were actively in those programs, but other</p> <p>3 customers were still on the edge but they just</p> <p>4 weren't quite ready in 2003 is my</p> <p>5 recollection, at least from the customers we</p> <p>6 were aware of.</p> <p>7 Q. And BK, I take it, again, you're</p> <p>8 referring to Burger King, is that --</p> <p>9 A. I'm sorry. Yes, Burger King.</p> <p>10 MR. GREENE: Can I just remind you</p> <p>11 to let Mr. Neuwirth finish his question --</p> <p>12 THE WITNESS: Sure.</p> <p>13 MR. GREENE: -- before you start</p> <p>14 your answer. I'm sure that will make it</p> <p>15 easier for the court reporter.</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MR. NEUWIRTH:</p> <p>18 Q. Now, do you recall that this new</p> <p>19 provision that was adopted in 2003 to allow</p> <p>20 producers to purchase and sell certified eggs</p> <p>21 only to meet customer demand was actually</p> <p>22 approved by the UEP board of directors?</p> <p>23 A. Yes.</p> <p>24 Q. And did you participate in that vote?</p> <p>25 A. I believe I did, yes.</p>
79	81
<p>1 have given Michael Foods a reason at that</p> <p>2 point to take advantage of that feature of the</p> <p>3 program?</p> <p>4 A. Yes. I mean, we had many customers we</p> <p>5 were talking to. There was a lot of education</p> <p>6 going on. A lot of people really didn't</p> <p>7 understand -- the laypeople really didn't have</p> <p>8 a -- didn't understand this whole thing. And</p> <p>9 so we spent a lot of time, a lot of</p> <p>10 meetings -- customer meetings explaining, you</p> <p>11 know, what was going on and what the animal</p> <p>12 welfare programs or husbandry programs would</p> <p>13 do. But no, nobody was quite ready to</p> <p>14 actually execute at that point. And so we</p> <p>15 just hadn't followed through on it at that</p> <p>16 point.</p> <p>17 Q. And when you say no one was quite ready,</p> <p>18 I take it you were referring to you didn't</p> <p>19 have any customers that were prepared to say</p> <p>20 they only wanted to purchased these certified</p> <p>21 eggs?</p> <p>22 A. Yes. At that point we had McDonald's --</p> <p>23 you know, McDonald's was already on their own</p> <p>24 program. They were probably the first. And</p> <p>25 then BK had followed, which was our customer.</p>	<p>1 Q. And did you vote in favor of that</p> <p>2 provision?</p> <p>3 A. Yes.</p> <p>4 Q. Now, a point came in early 2005, correct,</p> <p>5 when the UEP then switched course and went</p> <p>6 back to a requirement that participants in the</p> <p>7 UEP Certified program have 100 percent</p> <p>8 compliance, right?</p> <p>9 A. Yes.</p> <p>10 Q. So prior to that point when the UEP went</p> <p>11 back to a requirement of 100 percent</p> <p>12 compliance, is it correct that Michael Foods</p> <p>13 never chose to take advantage of the provision</p> <p>14 that would have allowed Michael Foods to sell</p> <p>15 some UEP Certified eggs without 100 percent</p> <p>16 compliance?</p> <p>17 MR. GREENE: Object to the</p> <p>18 characterization.</p> <p>19 MR. DAVIS: Object to the form.</p> <p>20 BY MR. NEUWIRTH:</p> <p>21 Q. Let me rephrase the question. We've</p> <p>22 talked today about a provision that was</p> <p>23 approved in 2003 at a board meeting you</p> <p>24 attended that would allow non-certified</p> <p>25 producers to purchase and market certified</p>

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<p>1 eggs, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that program -- that opportunity</p> <p>4 remained in place until 2005 when the UEP</p> <p>5 ended that policy and went back to requiring</p> <p>6 100 percent compliance for any company that</p> <p>7 wanted to sell UEP Certified eggs, correct?</p> <p>8 MR. GREENE: Object to the</p> <p>9 characterization.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. NEUWIRTH:</p> <p>12 Q. And it's correct, isn't it, that during</p> <p>13 that period from 2003 to 2005 when Michael</p> <p>14 Foods could have sold certified eggs it never</p> <p>15 chose to do that?</p> <p>16 A. Yes, that's true.</p> <p>17 Q. And is that, again, because throughout</p> <p>18 that period you didn't -- Michael Foods didn't</p> <p>19 have any customer request or demand that</p> <p>20 would've justified doing that?</p> <p>21 A. Not that I'm aware of, no.</p> <p>22 Q. But presumably you would've been familiar</p> <p>23 with that if it had occurred, right?</p> <p>24 A. Yes.</p> <p>25 Q. Now, turning back to 2005 when the UEP</p>	<p>1 if you look near the top of the page, do you</p> <p>2 see that there are two motions referenced?</p> <p>3 A. (Reviews document.) Yes.</p> <p>4 Q. And I'd like to focus on the second one.</p> <p>5 And again, as I'm sure your counsel will tell</p> <p>6 you, you're always free to look at any part of</p> <p>7 this document you want to. I'm not trying to</p> <p>8 inhibit your review. But -- and if you're</p> <p>9 ever not ready to answer questions, tell me.</p> <p>10 But I -- what I'd like to focus on first is</p> <p>11 the second motion that's listed on the top of</p> <p>12 the page. It says: It was moved by Mooney</p> <p>13 and seconded by Dean to recommend that the</p> <p>14 current intentions program for flocks to be</p> <p>15 disposed of four weeks earlier than previously</p> <p>16 scheduled and/or flock size reduction by five</p> <p>17 percent be extended through Labor Day.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is -- do you have an understanding</p> <p>21 of what the intentions program was?</p> <p>22 A. I do not recall exactly what it was</p> <p>23 about.</p> <p>24 Q. Okay. If you then turn to the next page,</p> <p>25 do you see that at the bottom of the page, and</p>
83	85
<p>1 put back in place the 100 percent compliance</p> <p>2 requirement for participation in the certified</p> <p>3 program, I take it that was something you were</p> <p>4 opposed to?</p> <p>5 A. Yes, definitely.</p> <p>6 Q. And by "you," I mean you, Mr. Baker, as a</p> <p>7 member of the board there on behalf of Michael</p> <p>8 Foods.</p> <p>9 A. Yes.</p> <p>10 Q. Let me give you a document -- a document</p> <p>11 that starts with the Bates number UE0210299</p> <p>12 through 303. And we're marking this as Baker</p> <p>13 Exhibit 6. And these are minutes of a UEP</p> <p>14 board of directors meeting from January 25th,</p> <p>15 2005.</p> <p>16 (Exhibit Number 6 marked for</p> <p>17 identification.)</p> <p>18 BY MR. NEUWIRTH:</p> <p>19 Q. And is it correct, Mr. Baker, that these</p> <p>20 are minutes of a January 25th, 2005 UEP board</p> <p>21 of directors meeting that you attended?</p> <p>22 A. (Reviews document.) Yes.</p> <p>23 Q. Let me ask you if you could turn to the</p> <p>24 page which is the third page of the document</p> <p>25 that has the Bates number ending in 301. And</p>	<p>1 this is the page ending in Bates number 302,</p> <p>2 there's a reference to motion number 1, motion</p> <p>3 number 2, motion number 3 and motion number 4?</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And is it correct that these are all</p> <p>7 motions that came out of the Animal Welfare</p> <p>8 Committee report at this meeting?</p> <p>9 A. Yes.</p> <p>10 Q. And I'd like you, if you could, to focus</p> <p>11 first on motion number 2. And do you see that</p> <p>12 it says, "It was moved by Oldenkamp and</p> <p>13 seconded by Fortin to approve the preamble and</p> <p>14 motion stating, quote, in order to protect the</p> <p>15 integrity of the ACC program and logo and in</p> <p>16 view of the difficulty in preventing the</p> <p>17 commingling of certified eggs with</p> <p>18 non-certified eggs and to treat all egg</p> <p>19 producers equally, it is hereby moved that no</p> <p>20 new licenses to market Animal Care Certified</p> <p>21 eggs will be issued or renewed to producers</p> <p>22 who are not ACC certified?"</p> <p>23 Do you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And it says that the motion carried with</p>

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<p>1 a vote of 19 yes and eight nos, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it's correct that you, Mr. Baker,</p> <p>4 were one of the no votes, correct?</p> <p>5 A. Absolutely.</p> <p>6 Q. Now, just to quickly go over some terms</p> <p>7 before we talk about the substance, is it</p> <p>8 correct that the ACC program referred to there</p> <p>9 is what was at that time the name of what has</p> <p>10 now come to be called the UEP Certified</p> <p>11 program?</p> <p>12 A. Yes.</p> <p>13 Q. And is it correct that in order to be ACC</p> <p>14 certified a producer had to comply with the</p> <p>15 100 percent requirement?</p> <p>16 A. Yes.</p> <p>17 Q. And so is it correct that the practical</p> <p>18 import of this motion was that the only way a</p> <p>19 company could sell UEP Certified eggs was if</p> <p>20 at the time it was ACC certified and complying</p> <p>21 with the 100 percent requirement?</p> <p>22 A. I -- yes, that's correct. That was my</p> <p>23 understanding.</p> <p>24 Q. And is that the reason that you voted no?</p> <p>25 A. Yes.</p>	<p>1 disagreed with the premise that it would be</p> <p>2 difficult to prevent commingling of certified</p> <p>3 and non-certified eggs?</p> <p>4 MR. GREENE: Objection,</p> <p>5 argumentative.</p> <p>6 THE WITNESS: Not necessarily, no,</p> <p>7 I do not. Because we had provided audit</p> <p>8 guidelines. We worked with staff to be able</p> <p>9 to audit these -- the movement of eggs and to</p> <p>10 try to put some integrity into the program to</p> <p>11 prevent that from happening. So --</p> <p>12 BY MR. NEUWIRTH:</p> <p>13 Q. Right.</p> <p>14 A. -- I'm not sure why this was -- yeah, I</p> <p>15 guess I don't recall exactly. But I mean, we</p> <p>16 talked about it, yes.</p> <p>17 Q. You, Mr. Baker, based on your experience</p> <p>18 at Michael Foods --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- did not believe that at Michael Foods</p> <p>21 there was a problem distinguishing between</p> <p>22 certified and non-certified eggs, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And you felt strongly that that was</p> <p>25 something that Michael Foods could easily</p>
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<p>1 Q. Now, it says here -- we read in the</p> <p>2 description that -- there's a phrase: In view</p> <p>3 of the difficulty in preventing the</p> <p>4 commingling of certified eggs with</p> <p>5 non-certified eggs, right, you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And that was something that you strongly</p> <p>8 disagreed with as a premise for this motion,</p> <p>9 correct?</p> <p>10 MR. GREENE: Objection, lack of</p> <p>11 foundation.</p> <p>12 BY MR. NEUWIRTH:</p> <p>13 Q. That's correct, isn't it?</p> <p>14 A. I'm sorry. Repeat the question.</p> <p>15 Q. This says that one of the reasons for</p> <p>16 this motion is in view of the difficulty in</p> <p>17 preventing the commingling of certified eggs</p> <p>18 with non-certified eggs, right?</p> <p>19 A. Yes. I'm not aware of where all their --</p> <p>20 the motivation came from for this motion. And</p> <p>21 I don't know if that was a specific problem at</p> <p>22 that time, you know, with enforcing the rules</p> <p>23 or guidelines. We're not involved in that</p> <p>24 part of it.</p> <p>25 Q. Mr. Baker, you don't recall that you</p>	<p>1 prevent, correct?</p> <p>2 A. Yes. Yes.</p> <p>3 Q. And you expressed that view to the UEP</p> <p>4 when there was discussion about the</p> <p>5 100 percent requirement of the certified</p> <p>6 program, correct?</p> <p>7 A. I must have. I don't recall</p> <p>8 specifically. There was so many discussions</p> <p>9 in that period on these -- on this issue. I'm</p> <p>10 sure that I did actually because, yeah, we had</p> <p>11 no issue about -- we were very accustomed to</p> <p>12 doing those things for customers and specific</p> <p>13 specifications. So for us segregation and</p> <p>14 documentation was a non-issue to us.</p> <p>15 MR. GREENE: Steve (indicating).</p> <p>16 MR. NEUWIRTH: Yes. Absolutely.</p> <p>17 BY MR. NEUWIRTH:</p> <p>18 Q. Your counsel has looked at his watch and</p> <p>19 indicated he'd like to take a break. And as I</p> <p>20 said earlier, anytime anyone wants to take a</p> <p>21 break for any reason, we can do that.</p> <p>22 THE VIDEOGRAPHER: We are going off</p> <p>23 the record.</p> <p>24 The time is 10:03 a.m.</p> <p>25 (Recess.)</p>

23 (Pages 86 to 89)

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<p>1 THE VIDEOGRAPHER: We are back on 2 the record. This marks the beginning of 3 videotape number 2 in the deposition of 4 Terry Baker. 5 The time is 10:17 a.m. 6 BY MR. NEUWIRTH: 7 Q. Mr. Baker, if we could look again at the 8 minutes of the January 25th, 2005 board 9 meeting. There is a third motion that's 10 listed on the bottom of the page we were 11 looking at ending with the Bates number 302, 12 which says: It was moved by Oldenkamp and 13 seconded by Clanton that a license to market 14 ACC eggs may be issued to shell egg processors 15 and further egg processors who do not own or 16 operate egg production facilities. 17 Do you see that? 18 A. Yes. 19 Q. It says that that motion carried with 26 20 yes and two no votes. 21 Do you see that? 22 A. Yes. 23 Q. Do you recall if you were one of the two 24 no votes on that motion? 25 A. Yes.</p>	<p>1 Q. Now, this motion had fewer no votes than 2 motion number 2, which had eight no votes. Do 3 you have any recollection of why only you and 4 one other person voted no to this motion 5 number 3? 6 A. I'm a little bit mystified, but I do not 7 at this moment. I didn't remember there were 8 only two no votes until I saw this. 9 Q. Do you happen to remember who else voted 10 no to this third motion? 11 A. I do not. 12 Q. These motions that we're looking at that 13 came out of the Animal Welfare Committee that 14 you voted against, they came at a time when 15 egg prices had dropped significantly, correct? 16 A. Yeah, I don't have the markets in front 17 of me, but generally I think that might have 18 been the case. I don't know for sure without 19 looking. 20 Q. Let me ask if you could look at the first 21 page of these minutes. And do you see there 22 is a section called Chairman's Comments on the 23 first page at the bottom? 24 A. (Reviews document.) Yes, I do. 25 Q. And was it typical that board minutes</p>
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<p>1 Q. And what was the reason that you voted no 2 to that motion? 3 A. The same reason we voted no on the motion 4 above it. They were related motions or almost 5 companion motions. So same issue for us. 6 Q. Well, this issue has to do with 7 continuing to allow shell egg processors and 8 further egg processors to get a license to 9 sell certified eggs without having to be ACC 10 certified companywide, correct? 11 A. Yes. 12 Q. And why would that have been something 13 that Michael Foods opposed? 14 A. Well, this motion was even -- was more -- 15 we were more opposed to this motion even than 16 the prior one because this motion would 17 allow -- potentially could have allowed some 18 of our competitors who were just processors in 19 the egg products business to actually market 20 ACC eggs. And since we're an egg producer and 21 a processor at that point in time, we were 22 precluded without joining or being 100 percent 23 in the program. So this motion was actually 24 more threatening to us probably even than the 25 other one.</p>	<p>1 would start out with a section reflecting the 2 chairman's comments at the start of a meeting? 3 A. In some cases, yes. 4 Q. Did the chairman of the UEP frequently 5 address the board of directors at meetings? 6 A. Yes. Generally on the agenda there's 7 always a section for the chairman's comments. 8 Whether -- where it fits in the agenda, I 9 don't know necessarily. 10 Q. Okay. And do you see that the -- that 11 his -- that Chairman Deffner's comments 12 recorded in this minutes begin with, quote: 13 It was just a year ago that we met in this 14 very hotel and we were so full of optimism. 15 All indicators were that we could sustain \$1 16 plus eggs for an extended period and the price 17 structures for the next 18 months. We took 18 care of that. The market came full circle 19 with prices from \$1.35 to \$0.59. 20 Do you see that? 21 A. Yes, I do. 22 Q. And do you recall that as of January 2005 23 there had been a substantial drop in price for 24 eggs from something like a \$1.35 to \$0.59? 25 A. Yes, I remember the drop. I just didn't</p>

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<p>1 recall the timing precisely because '04 was a 2 record market year, I believe, at that point. 3 And then in '05 and '06 generally markets were 4 below cost of production, I think, for a good 5 chunk of those years. So I just didn't recall 6 the exact timing, but this is a reminder, I 7 guess, that it was in that period. 8 Q. And this shows that as of the January 9 2005 board meeting there had already been a 10 significant price drop, correct? 11 A. Yes. 12 Q. It then says: We don't have to accept 13 low prices and we can have a good 2005 if we 14 just make a few changes and work together. 15 Do you see that? 16 A. Yes. 17 Q. Do you have a recollection of what 18 changes Chairman Deffner was referring to when 19 he said that? 20 A. No, not specifically. 21 Q. We're done with that set of board minutes 22 for now. 23 Do you have a recollection that in the 24 period 2004, 2005, 2006 the UEP would 25 periodically send its members economic alerts</p>	<p>1 page it says: Egg Industry Economic Alert, 2 Alert, Alert? 3 Do you see that? 4 A. Yes. 5 Q. Is something like this -- does this 6 appear extraordinary to you, or is this the 7 type of thing that the UEP, to your 8 recollection, would periodically send to 9 members? 10 MR. GREENE: Objection to form, 11 confusing. 12 MR. NEUWIRTH: What's confusing 13 about the question? 14 MR. GREENE: Well, there's sort of 15 two different questions, not clear exactly how 16 you're supposed to answer the first part 17 versus the second part. 18 MR. BARNES: It's compound. 19 MR. GREENE: Compound probably a 20 better objection. 21 BY MR. NEUWIRTH: 22 Q. Do you have a recollection of 23 periodically receiving egg industry economic 24 alerts of this type from the UEP? 25 A. No.</p>
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<p>1 describing conditions in the market? 2 MR. DAVIS: Objection, lacks 3 foundation. 4 THE WITNESS: I don't recall those, 5 but could've been. I just don't recall them. 6 BY MR. NEUWIRTH: 7 Q. Let me give you a document bearing the 8 Bates number MF1006 -- sorry, 10006321 and 9 322. And we'll mark this as, I believe, 10 Exhibit 7. MFI: I'm sorry. The Bates number 11 is MFI0006321. 12 (Exhibit Number 7 marked for 13 identification.) 14 BY MR. NEUWIRTH: 15 Q. Once you've had a chance to take a look 16 at this document, can you let me know if you 17 recall seeing it before? 18 A. (Reviews document.) I don't recall 19 seeing this. 20 Q. Okay. I can represent to you that when 21 this document was produced in this case you 22 were identified by Michael Foods as the 23 custodian of the document. 24 A. Okay. 25 Q. Do you see that at the top of the first</p>	<p>1 Q. Now, after -- if you can go back and look 2 again at the January 25th, 2005 board minutes. 3 I just want to focus your attention on the 4 second -- on the third -- on the fourth page 5 of those minutes, the page ending with 302. 6 Motion number 2 and number 3 that came out of 7 the Animal Welfare Committee that were 8 approved by the UEP but you told us you voted 9 against, right? 10 A. Yes. 11 Q. After the passage of those two motions, 12 did a point come when Michael Foods considered 13 suing the UEP as a result of the passage of 14 those motions? 15 A. No. We had some limited discussion on 16 options, but nothing that was -- but there was 17 never anything really concrete or really -- 18 really considered as a serious -- or, you 19 know, as a definite option. 20 Q. Did Michael Foods after the passage of 21 motions number 2 and number 3 listed here 22 consider cancelling its membership in the UEP 23 as a result? 24 A. We did. It was always a consideration. 25 And there were some of the internal folks</p>

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<p>1 within MFI that thought we should consider</p> <p>2 that. But at the end of the day we always</p> <p>3 felt it was better to stay as part of the</p> <p>4 process and try to work from within.</p> <p>5 Q. And MFI, you're referring to Michael</p> <p>6 Foods?</p> <p>7 A. Michael Foods.</p> <p>8 MR. NEUWIRTH: Let's mark as Baker</p> <p>9 Exhibit 8 a document bearing the Bates number</p> <p>10 MF10614973 through 75.</p> <p>11 (Exhibit Number 8 marked for</p> <p>12 identification.)</p> <p>13 BY MR. NEUWIRTH:</p> <p>14 Q. And my only question on this document is</p> <p>15 if you can just confirm that this document</p> <p>16 includes an email that Gregg Ostrander sent to</p> <p>17 you and others on February 8th, 2005 and an</p> <p>18 email that you sent to a group of people on</p> <p>19 February 7th, 2005.</p> <p>20 A. (Reviews document.) I'm sorry. What was</p> <p>21 the -- was there a question?</p> <p>22 Q. Is it correct that from the middle of the</p> <p>23 first page of this document through to the end</p> <p>24 there is an email that you, Terry Baker, sent</p> <p>25 to a group of people on February 7th, 2005?</p>	<p>1 Q. Is it correct that what you attached to</p> <p>2 this email was a document that was created</p> <p>3 within Michael Foods?</p> <p>4 A. Yes.</p> <p>5 Q. And it was a document that had been</p> <p>6 created, according to your email, by Toby</p> <p>7 Catherman, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And did you have any role working with</p> <p>10 Mr. Catherman on the creation of this attached</p> <p>11 document?</p> <p>12 A. Yes, we would have worked together to do</p> <p>13 this.</p> <p>14 Q. Now, on your email on the first page you</p> <p>15 say: Toby and I had a conference call earlier</p> <p>16 today with our Midwest producer group. And</p> <p>17 then you name some members of the group.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Can you tell me what this Midwest</p> <p>21 producer group was?</p> <p>22 A. Primarily it was some people that --</p> <p>23 within the industry who had some similarity</p> <p>24 and viewpoints on some of the recent motions</p> <p>25 and things that had been occurring in UEP.</p>
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<p>1 A. Yes.</p> <p>2 Q. And above that on the first page is an</p> <p>3 email that Mr. Ostrander sent to you and</p> <p>4 others on February 8th, 2005, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And do you recall sending the email that</p> <p>7 is set forth here from February 7th, 2005?</p> <p>8 A. Yes, I do.</p> <p>9 MR. NEUWIRTH: Let's mark as Baker</p> <p>10 Exhibit 9 a document bearing the Bates number</p> <p>11 MF10027797 and 0027798. Again, this is Baker</p> <p>12 Exhibit 9. And actually, let me clarify.</p> <p>13 This bears the Bate -- there is a cover email</p> <p>14 which bears the Bates number MF10027797 and</p> <p>15 then an attachment that bears the Bates number</p> <p>16 MF10027798 through 801.</p> <p>17 (Exhibit Number 9 marked for</p> <p>18 identification.)</p> <p>19 BY MR. NEUWIRTH:</p> <p>20 Q. Is it correct that what we have on the</p> <p>21 cover here, Mr. Baker, is an email that you</p> <p>22 sent to JD Clarkson, Gregg Ostrander,</p> <p>23 Toby Catherman and Tim Bebee on April 16th,</p> <p>24 2005?</p> <p>25 A. (Reviews document.) Yes.</p>	<p>1 And it was a little bit of a variety. They</p> <p>2 weren't all of the same make-up, of course.</p> <p>3 But there were some similarities or at least</p> <p>4 some common philosophy or thoughts about some</p> <p>5 of the direction at UEP.</p> <p>6 Q. Right. And as you indicate, one of the</p> <p>7 members was -- one of the participants in that</p> <p>8 group was Sparboe?</p> <p>9 A. Yes.</p> <p>10 Q. And in particular you -- on the</p> <p>11 conference call you refer to Beth Schnell and</p> <p>12 Wayne Carlson both participated, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, if you look at the end of the</p> <p>15 document, do you see that on the last two</p> <p>16 pages there are handwritten notes?</p> <p>17 A. (Reviews document.) Yes.</p> <p>18 Q. Are those your handwritten notes?</p> <p>19 A. No, they are not.</p> <p>20 Q. Do you happen to recognize the</p> <p>21 handwriting as belonging to anyone that you</p> <p>22 know?</p> <p>23 A. Not -- no, I do not for sure.</p> <p>24 Q. If you look at the page -- the second</p> <p>25 page of this exhibit, which is the first page</p>

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<p>1 of the attachment to the email with the Bates 2 number ending 798, do you see that around the 3 middle -- that the first thing that's 4 referenced on the page are that motion 5 number 2 and motion number 3 that we had 6 looked at from the January 2005 UEP board of 7 directors minutes? 8 Do you see that? 9 A. Yes. 10 Q. And do you recognize that those are the 11 motions that are being discussed here? 12 A. Yes. 13 Q. And then there's a section entitled 14 Reasons for motions. Do you see that? 15 A. Yes, I do. 16 Q. And is it fair to say that this was an 17 effort to set forth your and Mr. Catherman's 18 understandings of the reasons why these 19 motions were made and adopted? 20 A. Yeah, it -- these were probably a 21 collection of some of the innuendo, rumors 22 that we had heard talking to various sources 23 after the meeting and post meeting, certainly 24 not fact necessarily. But those were some of 25 the things we were hearing.</p>	<p>1 that followed up the January meeting. 2 Q. Who is Bob Krouse, K-r-o-u-s-e? 3 A. Bob was the president or CEO of Midwest 4 Poultry. 5 Q. And was Midwest Poultry -- well, your 6 email indicates, right, that Midwest Poultry 7 was part of this Midwest producer group that 8 you and Mr. Catherman spoke to about this 9 attachment to your email of April 16th, 2005, 10 correct? 11 A. Yes. 12 MR. NEUWIRTH: And let's mark as 13 Baker Exhibit 10 a document bearing Bates 14 numbers UE0221301 through 308. And this Bates 15 range includes a cover letter, minutes of a 16 Producer Committee For Animal Welfare from 17 April 19th, 2005 and an attachment bearing the 18 heading UEP Animal Welfare Committee, Tuesday, 19 April 19th, 2005. 20 (Exhibit Number 10 marked for 21 identification.) 22 BY MR. NEUWIRTH: 23 Q. And if you look at the second page of 24 this packet of materials, do you see, 25 Mr. Baker, that there are minutes from a</p>
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<p>1 Q. And it is a fact that those were things 2 you were hearing, correct? 3 A. Yes. 4 Q. And this -- this -- this attachment to 5 your email without the handwritten notes on 6 the last two page was something that Michael 7 Foods ended up presenting to the UEP Animal 8 Welfare Committee, correct? 9 A. You know, I don't recall. That's 10 possible. I just don't recall for sure if we, 11 in fact, did circulate this with that group 12 later on. 13 Q. Do you recall that -- you were not a 14 member of the Animal Welfare Committee, 15 correct? 16 A. Correct. 17 Q. But do you recall attending a meeting of 18 the Animal Welfare Committee to present what 19 is attached to this email? 20 A. Yeah, I don't remember the timeline. But 21 I think there was a meeting that Toby and I 22 attend, a committee meeting that was separate 23 from a board meeting of the -- it was just an 24 Animal Welfare Committee meeting on its own. 25 And I believe -- that must've been the meeting</p>	<p>1 Producer Committee For Animal Welfare dated 2 April 19th, 2005? 3 A. (Reviews document.) Yes. 4 Q. And do you see that the minutes show that 5 in addition to the committee members there 6 were attendees including Dr. Jeff Armstrong, 7 Gene Gregory, Toby Catherman and you? 8 A. Yes. 9 Q. And if you turn to the page in this 10 packet ending in the Bates number 304, do you 11 see that there is a heading near the top of 12 the page that says Challenge of Policy 13 Regarding Who May Market Animal Care Certified 14 Eggs? 15 Do you see that? 16 A. Yes. 17 Q. And do you see that it then says, "Bob 18 Krouse was joined by Toby Catherman and 19 Terry Baker and reported that they represented 20 several producers that were extremely 21 concerned with the motion adopted in January 22 that stated the following"? 23 Do you see that? 24 A. Yes, I do. 25 Q. And the motion that's there is the motion</p>

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<p>1 which said -- from the January 25th -- the</p> <p>2 January 2005 meeting of the UEP board of</p> <p>3 directors that no new license to market Animal</p> <p>4 Care Certified eggs will be issued or renewed</p> <p>5 to producers who are not ACC certified, right?</p> <p>6 A. Yes.</p> <p>7 Q. And does this refresh your recollection</p> <p>8 of the fact that you attended a</p> <p>9 committee [sic] of the Animal Welfare</p> <p>10 Committee and when you did it in 2005?</p> <p>11 A. Yes. This was the meeting I was thinking</p> <p>12 of earlier.</p> <p>13 Q. And do you see that it then says, "The</p> <p>14 challengers presented a number of problems</p> <p>15 that were being created by this motion and</p> <p>16 offered a new motion that would correct the</p> <p>17 January motion"?</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. It then says in parenthesis: The</p> <p>21 complete details of their challenge is</p> <p>22 attached are included as part of the meeting</p> <p>23 minutes, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And do you understand that to be</p>	<p>1 Michael Foods that is referenced on the third</p> <p>2 page of the April 19th, 2005 minutes of the</p> <p>3 Producer Committee For Animal Welfare?</p> <p>4 A. That would effectively -- would have</p> <p>5 overturned the motion or reversed the motion</p> <p>6 from the January board meeting and allowed</p> <p>7 marketing license to be issued with some</p> <p>8 more -- more requirements, reporting</p> <p>9 requirements, documentation requirements</p> <p>10 because we were trying to allay some of the</p> <p>11 concerns about people being disingenuous,</p> <p>12 let's say, and not really abiding by the</p> <p>13 rules. So we were trying to put some more</p> <p>14 teeth into the audit process and the</p> <p>15 documentation to allay those fears.</p> <p>16 Q. But the ultimate objective here, as you</p> <p>17 said, was to reverse the provision that the</p> <p>18 UEP board had adopted in January, which said</p> <p>19 that licenses to sell UEP Certified eggs would</p> <p>20 only be given to ACC certified producers who</p> <p>21 were 100 percent compliant, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And if I understood you correctly, in</p> <p>24 order to allay fears of members that you</p> <p>25 perceived, you added some reporting and other</p>
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<p>1 referring to the attachment that follows the</p> <p>2 minutes, which is that document that had been</p> <p>3 attached to your email that we previously</p> <p>4 marked as Exhibit 9?</p> <p>5 A. Yes, it appears to be the same document.</p> <p>6 I don't know that there's any changes. But it</p> <p>7 appears to that document.</p> <p>8 Q. Now, going back to the page in the</p> <p>9 minutes that ends with the Bates number ending</p> <p>10 in 304, do you see that it says that</p> <p>11 Mr. Krouse and Mr. Catherman and you presented</p> <p>12 a motion that was moved by Mr. Krouse and then</p> <p>13 seconded by Mr. Bebee of Michael Foods?</p> <p>14 A. Yes.</p> <p>15 Q. And what was your understanding of what</p> <p>16 would be accomplished by this motion?</p> <p>17 A. I need to take a quick review of the</p> <p>18 motion itself again just to make sure I</p> <p>19 remember.</p> <p>20 Q. Certainly.</p> <p>21 A. (Reviews document.) And then can you</p> <p>22 repeat your question just -- again?</p> <p>23 Q. Sure. What was your understanding of the</p> <p>24 purpose of the motion that was moved by</p> <p>25 Mr. Krouse and seconded by Mr. Bebee of</p>	<p>1 requirements for any company that was not ACC</p> <p>2 certified that would be selling UEP Certified</p> <p>3 eggs, correct?</p> <p>4 A. Yes.</p> <p>5 Q. But, in fact, that resolution that was</p> <p>6 presented at this Animal Welfare Committee</p> <p>7 meeting was voted down, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it was voted down eight to three,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And after that resolution was voted down,</p> <p>13 did Michael Foods, to your knowledge, give any</p> <p>14 further consideration to bringing a lawsuit</p> <p>15 against the UEP?</p> <p>16 MR. GREENE: Just a sec. He's</p> <p>17 asking a new question. Are you still on the</p> <p>18 document?</p> <p>19 THE WITNESS: No, I was just --</p> <p>20 MR. GREENE: I'm sorry. Can you</p> <p>21 ask the question again?</p> <p>22 BY MR. NEUWIRTH:</p> <p>23 Q. After this resolution that Mr. Krouse</p> <p>24 moved and Mr. Bebee seconded at the UEP -- at</p> <p>25 the Animal Welfare Committee meeting in April</p>

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<p>1 of 2005 was voted down, did Michael Foods at 2 that point give any consideration to bringing 3 a lawsuit against the UEP related to what was 4 then called the ACC? 5 A. I don't remember that we did. I think it 6 could've been out there. I just don't 7 remember that we -- that there was any serious 8 consideration to do that. But... 9 Q. Now, do you recall, to the extent there 10 was any discussion of a lawsuit, what types of 11 claims against the UEP were being discussed? 12 A. Well, we were -- we were concerned 13 about -- about the level playing field and 14 being -- having our competition be able to 15 market UEP Certified or ACC in that period. 16 And so we felt that that was not a level 17 playing field. And so if there was any merit 18 in that angle, that's what we would've been 19 talking about at that point. Because again -- 20 just to add to that, again, the customer 21 inquiries, customer interest was continuing to 22 grow throughout that period, you know, when we 23 talked earlier, you know. We didn't execute 24 the original marketing license because we just 25 really didn't have that opportunity -- you</p>	<p>1 from laypeople. So whether it was the right 2 term, I don't know. But again, we were -- the 3 issue was the level playing field. 4 Q. Right. But when you say "coming from 5 laypeople," you're talking about people who 6 were working in the business at Michael Foods, 7 right? 8 A. Yes, yes, yes. 9 Q. And they were not laypeople about the 10 business that Michael Foods was doing, right? 11 A. That would be correct. 12 MR. NEUWIRTH: Let me -- let's mark 13 as Baker Exhibit 11 a document bearing Bates 14 number MFI0034198 through 199. 15 (Exhibit Number 11 marked for 16 identification.) 17 MR. GREENE: Steve, did you intend 18 to give me just the one page? 19 MR. NEUWIRTH: It's on the back. 20 BY MR. NEUWIRTH: 21 Q. Mr. Baker, what I've just handed you as 22 Exhibit 11 includes an email that you sent on 23 Monday, March 13th, 2006, an email that 24 Mr. Ostrander sent in response on Monday, 25 March 13th, 2006 and then a response from you</p>
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<p>1 know, the opportunity wasn't there. But it 2 was continuing to grow, continuing to build 3 and we had more and more major customers 4 asking, inquiring and it seemed -- it seemed 5 apparent or obvious to us that at some point 6 this was going to be an issue for us. And 7 that's why we were trying to be proactive and 8 stay ahead of this. So that's why we were not 9 pleased when that motion was knocked down a 10 second time, so to speak. 11 Q. And I take it that in thinking about a 12 potential lawsuit against the UEP, one of the 13 issues that was at least thought about within 14 Michael Foods was the extent to which this -- 15 this ACC program was a restraint of trade, 16 right? 17 MR. BARNES: Objection, calls for 18 speculation and lacks foundation. He's 19 testified he had no recollection of 20 discussions about bringing a lawsuit. 21 BY MR. NEUWIRTH: 22 Q. You can go ahead. 23 A. I think at one point that was a term that 24 we had used. Whether that was coming from 25 counsel, I don't think it was. It was coming</p>	<p>1 to Mr. Ostrander by email on Tuesday, 2 March 14th, 2006, correct? 3 A. (Reviews document.) Yes. 4 Q. And your email at the bottom of the first 5 page that you sent on March 13th, 2006, which 6 initiated this email string, concerns a 7 conversation that you had with Gene Gregory of 8 the UEP, correct? 9 A. Yes. 10 Q. And is there any part of this email which 11 starts on the middle of the first page of this 12 exhibit and ends on the second page of the 13 exhibit, is there any part of this email that 14 you did not write yourself? 15 A. No. I wrote -- this was my email. 16 Q. And every time the word "I" is used in 17 this email it's referring to you, Terry L. 18 Baker, correct? 19 A. Yes. 20 Q. And so I take it you wrote the last 21 paragraph of the email which says, quote: I 22 strongly suggested to Gene that we obviously 23 are following these issues and while we are 24 not currently contemplating any legal issues, 25 we have discussed internally if any of these</p>

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<p>1 scenarios would be considered restraint of</p> <p>2 trade issues.</p> <p>3 You wrote that, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the Gene that is listed at the</p> <p>6 beginning of that paragraph is Gene Gregory,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this email concerns the ACC program</p> <p>10 of the UEP, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, is it correct that later in 2005,</p> <p>13 and this is a question not about the document</p> <p>14 you were just looking at, I'm moving on now to</p> <p>15 just another time period, that in the</p> <p>16 latter -- is it true that in the latter part</p> <p>17 of 2005 there was further discussion at the</p> <p>18 UEP about the possibility of rescinding the</p> <p>19 100 percent requirement for any company that</p> <p>20 was ACC certified?</p> <p>21 A. There was some discussion. I don't</p> <p>22 remember -- recall again the time period. I</p> <p>23 don't have that timeline or time frame. But</p> <p>24 there was another -- because there was a lot</p> <p>25 of dissatisfaction in the upper Midwest, which</p>	<p>1 requirement in either late 2005 or early 2006?</p> <p>2 A. I don't recall that we did. I think this</p> <p>3 was -- staff knew our position on the</p> <p>4 100 percent rule. And I believe it was their</p> <p>5 idea of trying to reach out and find some way</p> <p>6 to keep everybody in the fold, so to speak.</p> <p>7 But I don't know that we had any particular --</p> <p>8 anything new that we hadn't already brought up</p> <p>9 in other meetings and other sessions.</p> <p>10 Q. And at the end of 2005 and early 2006,</p> <p>11 was Michael Foods opposed to the 100 percent</p> <p>12 rule for the same reasons it had been opposed</p> <p>13 earlier when you had voted against reinstating</p> <p>14 it?</p> <p>15 A. Yes.</p> <p>16 Q. And is it correct that the staff proposal</p> <p>17 to rescind the 100 percent rule was voted down</p> <p>18 by the UEP board?</p> <p>19 A. You know, I don't remember that it came</p> <p>20 to a vote. And if it did, then I'm sure it</p> <p>21 did, yes, because there was a fairly negative</p> <p>22 reaction from the majority of producers was</p> <p>23 what we were told.</p> <p>24 Q. And do you recall who told you that?</p> <p>25 A. No, I don't off the top of my head.</p>
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<p>1 was one of the larger producing areas in UEP.</p> <p>2 And there was a lot of dissatisfaction with</p> <p>3 some of the Midwest producers who were</p> <p>4 primarily engaged in the breaking side or</p> <p>5 product side of the business that have</p> <p>6 slightly different interests, as we talked</p> <p>7 earlier, than some of the retail shell folks.</p> <p>8 So -- and I don't remember if that was the</p> <p>9 fall of '05 or -- I don't remember exactly</p> <p>10 right now that -- that particular period. But</p> <p>11 I think that was the period.</p> <p>12 Q. Right. And do you recall that a point</p> <p>13 came when there was a staff proposal from</p> <p>14 within the UEP to rescind the 100 percent</p> <p>15 rule?</p> <p>16 A. Yes. That must have been like</p> <p>17 December -- towards the end of '05 or early</p> <p>18 '06. And there was a proposal -- it was a</p> <p>19 proposal or an idea that they floated amongst</p> <p>20 some of the Midwest group at a special meeting</p> <p>21 we had or a -- I believe it was in</p> <p>22 Minneapolis.</p> <p>23 Q. Right. And did Michael Foods have any</p> <p>24 role in working with the UEP staff to generate</p> <p>25 that proposal to eliminate the 100 percent</p>	<p>1 Q. Let me give you a document that we'll</p> <p>2 mark as Baker number 12. And it bears two</p> <p>3 sets of Bates numbers.</p> <p>4 MR. NEUWIRTH: And you should tell</p> <p>5 me which one you prefer that we use. One is</p> <p>6 MFI and one is an MFC number.</p> <p>7 MR. GREENE: MFI.</p> <p>8 MR. NEUWIRTH: Okay. So let's use</p> <p>9 Bates number MF10040262 through 263.</p> <p>10 (Exhibit Number 12 marked for</p> <p>11 identification.)</p> <p>12 BY MR. NEUWIRTH:</p> <p>13 Q. So, Mr. Baker, this document I've just</p> <p>14 given you, this exhibit I've just given you</p> <p>15 includes an email that you wrote on</p> <p>16 December 8th, 2005, correct?</p> <p>17 A. (Reviews document.) Yes.</p> <p>18 Q. And this is an email where you report on</p> <p>19 a UEP meeting that took place on December 6th,</p> <p>20 2005, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And was this a UEP board meeting?</p> <p>23 A. No. This was just a staff meeting with</p> <p>24 a -- with a few selected producers, as listed</p> <p>25 in here, and several staff people and then the</p>

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<p>1 current -- the chairman at that point in time</p> <p>2 of UEP's board.</p> <p>3 Q. Okay. Was Sunny Fresh a member of the</p> <p>4 UEP?</p> <p>5 A. No, they were not.</p> <p>6 Q. So why were they attending this meeting?</p> <p>7 It says in your email that the members at the</p> <p>8 meeting including Norm Stocker and Terry</p> <p>9 Profit of Sunny Fresh. Why were they at the</p> <p>10 meeting?</p> <p>11 A. I think it was -- must have been</p> <p>12 because -- I don't know. I really can't speak</p> <p>13 to that. I know they were there, but I don't</p> <p>14 know why.</p> <p>15 Q. And are you now saying it was a mistake</p> <p>16 for you to include them on a list of members</p> <p>17 at the meeting?</p> <p>18 MR. GREENE: Object to the</p> <p>19 characterization.</p> <p>20 BY MR. NEUWIRTH:</p> <p>21 Q. Well, you wrote "Members at the meeting,"</p> <p>22 correct?</p> <p>23 A. (Reviews document.)</p> <p>24 Q. Your email, the second paragraph --</p> <p>25 A. Oh, okay.</p>	<p>1 December 2005?</p> <p>2 A. Sunny Fresh is not -- has not -- was not</p> <p>3 an egg producer.</p> <p>4 Q. That's not what I asked you. I asked</p> <p>5 you: Why are you certain that they were not a</p> <p>6 member of the UEP?</p> <p>7 A. I guess my understanding was you have to</p> <p>8 be an egg producer to be a member of UEP. And</p> <p>9 they were not egg producers, I don't believe,</p> <p>10 at that time, so they would not be eligible to</p> <p>11 be members. They could participate in UEA.</p> <p>12 Q. In fact, Mr. Ostrander in his</p> <p>13 December 8th, 2005 email to you expressly</p> <p>14 raised the issue of whether Sunny Fresh was a</p> <p>15 member of the UEP. And if not, why were they</p> <p>16 at the meeting?</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And did you ever undertake to answer that</p> <p>20 question for Mr. Ostrander?</p> <p>21 A. He was our CEO. So my thought would be I</p> <p>22 must've answered it somehow. He was -- I'm</p> <p>23 sorry. He was the Michael Foods CEO. So I</p> <p>24 would -- certain that I would have answered</p> <p>25 him.</p>
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<p>1 Q. -- lists members at the meeting, right?</p> <p>2 A. I would have to say that's probably a</p> <p>3 miss -- a typo or a mistake.</p> <p>4 Q. Hold on. Your counsel objected here.</p> <p>5 You wrote "Members at the meeting," correct?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Followed by a colon, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then you have a list of entities and</p> <p>10 people, including Norm Stocker and Terry</p> <p>11 Profit of Sunny Fresh, correct?</p> <p>12 A. Yes.</p> <p>13 Q. So is it your position now that it was a</p> <p>14 mistake when you wrote this email to have</p> <p>15 listed Sunny Fresh on a list of members at the</p> <p>16 meeting?</p> <p>17 A. Yes, because we did not invite anybody.</p> <p>18 These people were invited by UEP or staff.</p> <p>19 And, yeah, clearly that was a misstatement.</p> <p>20 It was not members. I was just listing --</p> <p>21 trying to list who was at the meeting. But we</p> <p>22 did not invite anybody. It was not our</p> <p>23 member -- our list of people or attendees.</p> <p>24 Q. Now, why are you certain that Sunny Fresh</p> <p>25 was not a member of the UEP as of</p>	<p>1 Q. And do you have any recollection today</p> <p>2 what your answer was?</p> <p>3 A. No, not specifically.</p> <p>4 MR. NEUWIRTH: And let me mark as</p> <p>5 Baker Exhibit 13 a document bearing the Bates</p> <p>6 number NL00217575.</p> <p>7 (Exhibit Number 13 marked for</p> <p>8 identification.)</p> <p>9 BY MR. NEUWIRTH:</p> <p>10 Q. And my only question is whether what I've</p> <p>11 just handed you as Baker Exhibit 13 are the</p> <p>12 minutes of the meeting that you were</p> <p>13 describing in your December 8th email that we</p> <p>14 marked as Baker Exhibit 12?</p> <p>15 A. (Reviews document.) Yes.</p> <p>16 Q. Now -- I'm done with that.</p> <p>17 Now, do you recall attending another</p> <p>18 Animal Welfare Committee meeting in early 2006</p> <p>19 where you spoke in support of a license</p> <p>20 agreement for non-ACC certified companies?</p> <p>21 A. You know, I don't know that I know -- I</p> <p>22 know I did that. I just don't know if it was</p> <p>23 January board meeting, there was a committee</p> <p>24 meeting prior, the day before, or which</p> <p>25 meeting you're referring to.</p>

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<p>1 MR. NEUWIRTH: Let me mark as Baker</p> <p>2 Exhibit 14 a document bearing Bates numbers</p> <p>3 UE0211204 through 05.</p> <p>4 (Exhibit Number 14 marked for</p> <p>5 identification.)</p> <p>6 BY MR. NEUWIRTH:</p> <p>7 Q. And when you get the document, my only</p> <p>8 question is whether looking at this document</p> <p>9 refreshes your recollection of whether you</p> <p>10 attended a UEP Animal Welfare Committee</p> <p>11 meeting in January 2006 and spoke in support</p> <p>12 of a license agreement for non-ACC certified</p> <p>13 companies?</p> <p>14 A. (Reviews document.) Yes.</p> <p>15 Q. Now, do you recall that in connection</p> <p>16 with this meeting, information was prepared</p> <p>17 that was stated to assess the market impact of</p> <p>18 eliminating the 100 percent rule for the UEP</p> <p>19 Certified program?</p> <p>20 A. No, I do not.</p> <p>21 MR. NEUWIRTH: Let's mark as Baker</p> <p>22 Exhibit 15 a document bearing Bates numbers</p> <p>23 MFI0005548 through 5576.</p> <p>24 (Exhibit Number 15 marked for</p> <p>25 identification.)</p>	<p>1 MR. GREENE: Yes? Okay. Thank</p> <p>2 you.</p> <p>3 BY MR. NEUWIRTH:</p> <p>4 Q. Let me ask you if you can turn to the</p> <p>5 page which has the Bates number ending in</p> <p>6 5571. And do you see that there's a heading</p> <p>7 there, Potential Market Impact From</p> <p>8 Elimination of 100 Percent UEP Certified Rule?</p> <p>9 Do you see that?</p> <p>10 A. (Reviews document.) Yes, I do.</p> <p>11 Q. And do you believe that you ever saw this</p> <p>12 page at or around the time of the</p> <p>13 January 23rd, 2006 Animal Welfare Committee</p> <p>14 meeting that you attended?</p> <p>15 A. No, not for certain.</p> <p>16 Q. And do you see that at the bottom of this</p> <p>17 page concerning the potential market impact</p> <p>18 from elimination of 100 percent UEP Certified</p> <p>19 rule there are three boxes?</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see that the first box says</p> <p>23 Hens Lost From Program?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And do you understand that to be</p>
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<p>1 BY MR. NEUWIRTH:</p> <p>2 Q. And the first question is whether you</p> <p>3 ever recall seeing this packet of materials</p> <p>4 before today?</p> <p>5 A. (Reviews document.) I may -- I think I</p> <p>6 have seen portions of it. I don't recall if</p> <p>7 we've seen this in the package. I was at the</p> <p>8 meeting, the committee meeting when they hand</p> <p>9 it out, but oftentimes they don't distribute</p> <p>10 it to the visitors or the guests, only to the</p> <p>11 committee members at the table. So I probably</p> <p>12 have seen portions of it, I'm pretty sure look</p> <p>13 familiar, but --</p> <p>14 Q. And this --</p> <p>15 A. -- just don't recall if I've seen it in</p> <p>16 its totality.</p> <p>17 Q. Sorry for interrupting. I thought you</p> <p>18 were done.</p> <p>19 Mr. Bebee from Michael Foods was a member</p> <p>20 of the Animal Welfare Committee of the UEP,</p> <p>21 correct?</p> <p>22 A. Uh-huh. Yes.</p> <p>23 MR. GREENE: Steve, can I ask: Was</p> <p>24 this produced as a single document?</p> <p>25 MR. TURNER-DODGE: Yes.</p>	<p>1 referring to the hens that are lost as a</p> <p>2 result of the 100 percent certified rule?</p> <p>3 MR. GREENE: Objection, lack of</p> <p>4 foundation.</p> <p>5 BY MR. NEUWIRTH:</p> <p>6 Q. I'm asking what your understanding is.</p> <p>7 Do you understand that Hens Lost From Program,</p> <p>8 that the program being referred to there is</p> <p>9 the 100 percent UEP Certified rule?</p> <p>10 MR. GREENE: Same objection.</p> <p>11 THE WITNESS: Yes, it would appear</p> <p>12 that's what they were trying to depict here.</p> <p>13 BY MR. NEUWIRTH:</p> <p>14 Q. Right. And the next box says: Hens</p> <p>15 Added Back to 53.3 Square Inches.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And 53.3 square inches is the size cage</p> <p>19 you could use for a hen if you were not</p> <p>20 complying with the UEP Certified requirements</p> <p>21 for a larger cage, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And so is it correct that what this box</p> <p>24 is showing is the number of hens that would be</p> <p>25 added back if the -- that -- if the 100</p>

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<p>1 percent rule were eliminated?</p> <p>2 A. Yes, it would -- it appears to be -- just</p> <p>3 be a rough estimate of assuming that if those</p> <p>4 levels, then those hens would come back into</p> <p>5 production, yeah.</p> <p>6 Q. And then there's a last box which is</p> <p>7 headed Estimated Decline in Market Value For</p> <p>8 All Eggs.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Now, did you have an understanding at the</p> <p>12 time that you attended the January 23rd, 2006</p> <p>13 Animal Welfare Committee meeting that there</p> <p>14 was a view within the Animal Welfare</p> <p>15 Committee, not necessarily held by everyone,</p> <p>16 but at least a view within the committee that</p> <p>17 eliminating the 100 percent UEP Certified rule</p> <p>18 could lead to a decline in the market value</p> <p>19 for all eggs?</p> <p>20 MR. DAVIS: Objection, calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: I would say we had</p> <p>23 heard that, somebody had suggested that in a</p> <p>24 meeting someplace that there would be</p> <p>25 people -- the program would lose membership or</p>	<p>1 Committee meeting that you attended, a point</p> <p>2 came where Michael Foods started having</p> <p>3 discussions with the UEP about a timeline for</p> <p>4 becoming 100 percent compliant with the UEP</p> <p>5 Certified program?</p> <p>6 A. Yes. It was about this time and we had</p> <p>7 growing interests, major national accounts.</p> <p>8 And to the extent that we were actually within</p> <p>9 that -- that first quarter of '06, we were</p> <p>10 actually -- had some customers suggesting that</p> <p>11 if we could not give them or provide their</p> <p>12 product with a -- with a -- utilizing U -- or</p> <p>13 ACC certified at that point, that we would be</p> <p>14 out.</p> <p>15 Q. Right. Now, under the old rule that</p> <p>16 would've allowed you to sell ACC certified</p> <p>17 eggs without being 100 percent compliant, you</p> <p>18 could have satisfied those customers with that</p> <p>19 type of license, correct?</p> <p>20 A. Yes, that was --</p> <p>21 MR. DAVIS: Objection.</p> <p>22 BY MR. NEUWIRTH:</p> <p>23 Q. That loud objection interrupted your</p> <p>24 answer. So let me read what's in the record.</p> <p>25 The question said: Now, under the old rule</p>
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<p>1 people would bail out of the program</p> <p>2 potentially or at least withdraw some of their</p> <p>3 layers if they had that option.</p> <p>4 BY MR. NEUWIRTH:</p> <p>5 Q. Well, the specific question is: Did you</p> <p>6 have an understanding that there was a view</p> <p>7 within the Animal -- now, I'm only asking for</p> <p>8 your understanding.</p> <p>9 A. Okay.</p> <p>10 Q. The understanding of Terry Baker, the</p> <p>11 human being that you are.</p> <p>12 Did you have an understanding at the time</p> <p>13 that you attended the January 23rd, 2006</p> <p>14 Animal Welfare Committee meeting that there</p> <p>15 was a view within the Animal Welfare</p> <p>16 Committee, not necessarily shared by all</p> <p>17 members, that eliminating the 100 percent UEP</p> <p>18 Certified rule could lead to a decline in the</p> <p>19 market value for eggs?</p> <p>20 MR. DAVIS: Objection, calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: Yes, I'd heard that.</p> <p>23 BY MR. NEUWIRTH:</p> <p>24 Q. Now, do you recall that at some point</p> <p>25 after this January 2006 Animal Welfare</p>	<p>1 that would've allowed you to sell ACC</p> <p>2 certified eggs without being 100 percent</p> <p>3 compliant, you could've satisfied those</p> <p>4 customers with that type of license, correct?</p> <p>5 And you said: Yes, that was -- and then the</p> <p>6 word "objection" was called out. So I don't</p> <p>7 want to prevent you from finishing your answer</p> <p>8 if you were in the middle of saying something.</p> <p>9 A. Okay. That was our position, that with</p> <p>10 the marketing license we could fulfill our</p> <p>11 customer demand. And until such time that --</p> <p>12 that if the demand continued to grow, there</p> <p>13 would be a point where we would consider</p> <p>14 converting our flocks into the program. But</p> <p>15 at least at the outset, the thought was the</p> <p>16 marketing license would provide us an avenue</p> <p>17 to meet our customer demand and yet not</p> <p>18 convert everything right away at least.</p> <p>19 Q. But, in fact, you had attempted for three</p> <p>20 years to have the UEP preserve Michael Foods'</p> <p>21 right to get a license without ever having to</p> <p>22 become 100 percent compliant, correct?</p> <p>23 A. Yes, we --</p> <p>24 Q. And you had advocated for that, correct?</p> <p>25 A. Yes.</p>

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<p>1 Q. And those efforts, as we saw today, were</p> <p>2 consistently rejected by both the UEP and the</p> <p>3 Animal Welfare Committee, correct?</p> <p>4 A. Yes, that's what's the record show.</p> <p>5 Q. Now -- and that's your recollection,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in early 2006 you said, I believe,</p> <p>9 that you now had some form of customer</p> <p>10 interest in obtaining UEP Certified eggs that</p> <p>11 was different from the level of interest</p> <p>12 previously. Is that a correct understanding</p> <p>13 of what you were suggesting?</p> <p>14 A. Yes.</p> <p>15 Q. And can you tell me the names of the</p> <p>16 customers that you understood now expressed an</p> <p>17 interest that was different from the interests</p> <p>18 that had been expressed previously?</p> <p>19 A. Yeah, I think -- if I recall, the most</p> <p>20 prominent ones were probably ConAgra, of</p> <p>21 course. We already went through the email</p> <p>22 about ConAgra. They were definitely looking</p> <p>23 at adding that. And so that was forcing us to</p> <p>24 look at it for our retail product line as it</p> <p>25 related to Wal-Mart. And, in fact, the</p>	<p>1 A. I don't know that we knew that firsthand.</p> <p>2 We were told that he did, but I don't know</p> <p>3 that for a fact.</p> <p>4 Q. Did you hear that from Sparboe?</p> <p>5 A. I don't recall where I heard it. I -- it</p> <p>6 may have been. I don't know.</p> <p>7 Q. And do you recall hearing from Sparboe</p> <p>8 that when Sparboe decided it wasn't going to</p> <p>9 participate in the UEP Certified program,</p> <p>10 Mr. Gregory contacted Sparboe customers?</p> <p>11 A. I don't know that for a fact. I'd heard</p> <p>12 that, but I don't know if that was fact or</p> <p>13 not.</p> <p>14 Q. I wasn't asking if it was fact.</p> <p>15 A. Okay.</p> <p>16 Q. I was just asking whether you'd heard</p> <p>17 that.</p> <p>18 A. Yes, we had heard that.</p> <p>19 Q. And did you hear it from Sparboe?</p> <p>20 A. I think that was -- yes.</p> <p>21 Q. Now, you were personally concerned about</p> <p>22 Mr. Gregory talking to customers about the UEP</p> <p>23 Certified program, correct?</p> <p>24 A. Yes. And I think if you go back a couple</p> <p>25 of exhibits to the meeting in December, that</p>
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<p>1 Wal-Mart buyer was very adamant during the</p> <p>2 spring of '06 that that was the direction they</p> <p>3 were going. And so that's why -- that was a</p> <p>4 big driver.</p> <p>5 Other customers we had that we're talking</p> <p>6 about at that point that were becoming -- were</p> <p>7 on the edge or the cusp, I think, was</p> <p>8 Unilever. We had -- Sysco was talking about</p> <p>9 it. I think -- and I don't remember. There</p> <p>10 was many others. But those were probably</p> <p>11 three of the bigger more prominent ones at</p> <p>12 that point on a national -- and that's a</p> <p>13 national account basis or a fairly large</p> <p>14 scale.</p> <p>15 Q. Mr. Gregory from the UEP had spoken to</p> <p>16 ConAgra about UEP Certified eggs, correct?</p> <p>17 A. Yes, that was my recollection.</p> <p>18 Q. And that's reflected in --</p> <p>19 A. I think that's --</p> <p>20 Q. -- the email that we marked earlier that</p> <p>21 you had written, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And did you also understand that</p> <p>24 Mr. Gregory had had communications with</p> <p>25 Wal-Mart about the UEP program?</p>	<p>1 was one of the major issues that we pointed</p> <p>2 out for UEP staff and Chairman Baker, that we</p> <p>3 just -- we're not comfortable with UEP staff</p> <p>4 getting into the marketing arena.</p> <p>5 Q. Right. And that would include things</p> <p>6 like Mr. Gregory --</p> <p>7 A. Yes.</p> <p>8 Q. -- talking to customers --</p> <p>9 A. Yes.</p> <p>10 Q. -- about the UEP program --</p> <p>11 A. Yes.</p> <p>12 Q. -- correct?</p> <p>13 A. Yes.</p> <p>14 MR. GREENE: Please let</p> <p>15 Mr. Neuwirth finish the questions.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. GREENE: Steve, anytime.</p> <p>18 MR. NEUWIRTH: You can pick.</p> <p>19 Whenever you want.</p> <p>20 MR. GREENE: Why don't we take a</p> <p>21 break.</p> <p>22 MR. NEUWIRTH: Sure.</p> <p>23 THE VIDEOGRAPHER: We are going off</p> <p>24 the record.</p> <p>25 The time is 11:30 a.m.</p>

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<p>1 (Recess.)</p> <p>2 THE VIDEOGRAPHER: We are back on</p> <p>3 the record.</p> <p>4 The time is 11:46 a.m.</p> <p>5 BY MR. NEUWIRTH:</p> <p>6 Q. You mentioned that in addition to ConAgra</p> <p>7 and Wal-Mart two other companies that were at</p> <p>8 least making inquiries about the certified</p> <p>9 eggs were Unilever and Sysco. Is it your</p> <p>10 position that Unilever had reached a point in</p> <p>11 2006 where it was telling Michael Foods that</p> <p>12 it wanted to purchase certified eggs?</p> <p>13 A. I don't recall if they -- I don't think</p> <p>14 they actually followed through with it at that</p> <p>15 moment or in that window there that -- maybe</p> <p>16 the spring of '06, but they certainly were --</p> <p>17 we spent a lot of time with them, educating</p> <p>18 and talking about it. But I don't know that</p> <p>19 they started in '06 or not. I don't recall</p> <p>20 when they started.</p> <p>21 Q. And you mentioned Sysco?</p> <p>22 A. Yes.</p> <p>23 Q. And was that a company that in 2006 was</p> <p>24 telling you that it actually wanted to</p> <p>25 purchase certified eggs?</p>	<p>1 A. -- reached that agreement.</p> <p>2 Q. And the understanding was that between</p> <p>3 the time you signed the agreement and the time</p> <p>4 that you reached 100 percent compliance,</p> <p>5 Michael Foods would be allowed to sell UEP</p> <p>6 Certified eggs?</p> <p>7 A. Yes. That was the process they agreed</p> <p>8 to.</p> <p>9 Q. Now, do you recall that in the spring of</p> <p>10 2006 you had discussions with Mr. Gregory of</p> <p>11 the UEP about getting this license arrangement</p> <p>12 set up that would give Michael Foods some</p> <p>13 period of time to ramp up to 100 percent</p> <p>14 compliance?</p> <p>15 A. Yes.</p> <p>16 Q. And this was Mr. Gregory, the executive</p> <p>17 vice president of the UEP, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Let me give you a document bearing Bates</p> <p>20 number MFI0002155 through 2158. And we will</p> <p>21 mark that as Baker Exhibit 16.</p> <p>22 (Exhibit Number 16 marked for</p> <p>23 identification.)</p> <p>24 BY MR. NEUWIRTH:</p> <p>25 Q. And is it correct that what we just</p>
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<p>1 A. Did they -- yes, that was the indications</p> <p>2 we were getting from them.</p> <p>3 Q. And did Michael Foods determine at that</p> <p>4 point that it would have to find a way to sell</p> <p>5 UEP Certified eggs?</p> <p>6 A. Yes. Given the fact that the marketing</p> <p>7 license was probably not going to -- it was</p> <p>8 not an option, then with the number of</p> <p>9 customers, the number of potential product</p> <p>10 involved, it became more -- you know, it was</p> <p>11 kind of nudging us towards that we were going</p> <p>12 to have to do or consider the actual</p> <p>13 conversion or joining at some point.</p> <p>14 Q. Now, there was then a series of</p> <p>15 negotiations between Michael Foods and the UEP</p> <p>16 on a timetable for Michael Foods ramping up</p> <p>17 its compliance with the UEP Certified</p> <p>18 requirements, is that correct?</p> <p>19 A. Yes, we started those discussions.</p> <p>20 Q. And ultimately an agreement was reached</p> <p>21 that set that timetable for Michael Foods to</p> <p>22 reach 100 percent compliance?</p> <p>23 A. Yes. And I believe in June, sometime in</p> <p>24 June of '06, we --</p> <p>25 Q. You reached that agreement?</p>	<p>1 marked as became Exhibit 16 begins on the</p> <p>2 first page with an email that Gene Gregory of</p> <p>3 the UEP sent to you on April 13th, 2006?</p> <p>4 Do you see that?</p> <p>5 A. (Reviews document.) Yes.</p> <p>6 Q. And do you see that he wrote to you:</p> <p>7 Terry, Attached is the report I have written</p> <p>8 for myself only at this time. I've done this</p> <p>9 so that I could have a record to refer to as</p> <p>10 well as use for selling points when needed.</p> <p>11 I'm real hopeful that you can move the</p> <p>12 phase-in schedule a little quicker because I</p> <p>13 think this would really help our cause. My</p> <p>14 plan is not to share your letter or my report</p> <p>15 with the committee at this time.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall that around April 2006</p> <p>19 you had made a proposal to give Michael Foods</p> <p>20 until July 2010 to reach 100 percent</p> <p>21 compliance and Mr. Gregory was suggesting to</p> <p>22 you that it would be better if that time</p> <p>23 period could be a little shorter?</p> <p>24 A. Yes.</p> <p>25 Q. And is it correct that in the document</p>

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<p>1 I've handed you there is a copy of the report</p> <p>2 that Mr. Gregory was referring to in his</p> <p>3 email?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall reading this report</p> <p>6 when he sent it to you?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And did you call Mr. Gregory and tell him</p> <p>9 that there was anything in the report that you</p> <p>10 felt was not true?</p> <p>11 A. I don't recall if I did or not.</p> <p>12 Q. Do you have any recollection of feeling</p> <p>13 that this report was unfair or inaccurate in</p> <p>14 any way?</p> <p>15 MR. BARNES: Unfair to whom?</p> <p>16 MR. NEUWIRTH: You can ask</p> <p>17 questions when your time comes.</p> <p>18 MR. BARNES: Then I object. The</p> <p>19 question is compound.</p> <p>20 BY MR. NEUWIRTH:</p> <p>21 Q. Again, I'm not asking you if you think</p> <p>22 now that it's inaccurate. I'm just asking you</p> <p>23 if you recall at the time telling Mr. Gregory</p> <p>24 that you thought the report was inaccurate in</p> <p>25 some way?</p>	<p>1 driven but have recognized that they need to</p> <p>2 be a partner with the industry and encourage</p> <p>3 their customers to accept the program and its</p> <p>4 costs"?</p> <p>5 Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And do you have any recollection of</p> <p>8 reading that when you received this report</p> <p>9 from Mr. Gregory?</p> <p>10 A. Not specifically to any one comment, no.</p> <p>11 Q. And do you have any recollection of</p> <p>12 telling Mr. Gregory that you thought the</p> <p>13 content of this paragraph was inaccurate?</p> <p>14 A. No. At this point I don't recall that we</p> <p>15 did. I don't know where those comments came</p> <p>16 from. I have no recollection at this point,</p> <p>17 that's a long time ago clearly, of whether</p> <p>18 those things were said or that was his</p> <p>19 interpretation. No idea where that would come</p> <p>20 from.</p> <p>21 Q. He clearly says in that paragraph that</p> <p>22 this is what Michael Foods says, right?</p> <p>23 A. Yep.</p> <p>24 Q. Is that correct?</p> <p>25 A. That's what he says, yes.</p>
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<p>1 A. No, I -- I don't think that we did. I</p> <p>2 mean, we certainly weren't taking ownership of</p> <p>3 his commentary. But I don't know that we</p> <p>4 specifically pointed anything out.</p> <p>5 Q. And do you see that on the first page of</p> <p>6 Mr. Gregory's report there is a paragraph that</p> <p>7 starts, "The difficulty comes in meeting the</p> <p>8 phase-in schedule for the cage space</p> <p>9 allowance"?</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And did you understand that to refer to</p> <p>13 the phase-in schedule that you had proposed</p> <p>14 for getting to 100 percent compliance?</p> <p>15 A. Yes.</p> <p>16 Q. And do you see that it then says,</p> <p>17 "Michael Foods says that they currently have</p> <p>18 no customers asking for certified egg products</p> <p>19 and they don't think the volume will ever be</p> <p>20 big among ingredient buyers and export</p> <p>21 accounts"?</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And do you see it then says, "They still</p> <p>25 believe that the program shall be customer</p>	<p>1 Q. And it's correct, isn't it, that the UEP</p> <p>2 board did not immediately approve Michael</p> <p>3 Foods' proposed phase-in because, among other</p> <p>4 things, the board felt that the phase-in</p> <p>5 period was too long, correct?</p> <p>6 MR. GREENE: Objection, calls for</p> <p>7 speculation.</p> <p>8 BY MR. NEUWIRTH:</p> <p>9 Q. Well, you were a member of the UEP board,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recall that the UEP board</p> <p>13 initially did not accept Michael Foods'</p> <p>14 proposal for a phase-in through 2010 because,</p> <p>15 among other things, it thought that the</p> <p>16 phase-in period was too long?</p> <p>17 A. Yeah, there may have been that and other</p> <p>18 issues. I know it took two months, you know,</p> <p>19 it was June before we actually finally came to</p> <p>20 an agreement for a transition plan. And I</p> <p>21 would -- I don't know what -- if that was the</p> <p>22 only issue. There may have been other issues.</p> <p>23 I don't know.</p> <p>24 Q. Do you remember attending a board meeting</p> <p>25 where there was a very lengthy discussion of</p>

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<p>1 the Michael Foods' proposal for a phase-in? 2 A. Yes. That would have been the May 3 meeting. 4 Q. Do you recall that that type of 5 discussion might have also occurred in an 6 April meeting? 7 A. I do not recollect at this point. I 8 don't remember when that meeting was. 9 MR. NEUWIRTH: Let's mark as Baker 10 17 the minutes of the April 25th, 2006 board 11 meeting bearing Bates number UE0292920 through 12 21. 13 (Exhibit Number 17 marked for 14 identification.) 15 BY MR. NEUWIRTH: 16 Q. And I can represent to you that the issue 17 of Michael Foods is discussed on the second 18 page of these minutes. I'm sorry. It's on 19 page 1 also, both pages. 20 A. (Reviews document.) Sorry. Can you 21 repeat the question? 22 Q. Yeah. Does looking at these minutes 23 refresh your recollection of whether there was 24 a lengthy discussion at the April 2006 UEP 25 board meeting about the proposal for a</p>	<p>1 will. 2 THE WITNESS: (Reviews document.) 3 BY MR. NEUWIRTH: 4 Q. Mr. Baker, is it correct that what I've 5 handed you is an email that you sent on 6 April 26th, 2006 concerning the April 25th, 7 2006 UEP board of directors meeting that we 8 had just been talking about? 9 A. Yes. 10 Q. And you attached to your email the 11 minutes that we were just looking at from that 12 meeting, correct? 13 A. Yes. 14 Q. And does reading -- since you just took 15 some time to read the email, does reading this 16 email refresh your recollection that at the 17 April 25th board meeting at least one of the 18 concerns that was raised about Michael Foods' 19 proposal was that the phase-in period was too 20 long? 21 A. Yes, that would be accurate. 22 Q. Do you recall that a point came where 23 Mr. Gregory suggested that as part of 24 joining -- as part of getting a license to 25 sell certified eggs, Michael Foods should</p>
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<p>1 phase-in for Michael Foods to become 2 100 percent compliant with the UEP Certified 3 program? 4 A. Yes. 5 Q. And it shows that there was such a 6 lengthy discussion for more than an hour, 7 correct? 8 A. Correct. 9 Q. And let me give you a document bearing 10 Bates number MF10016950 through 52. 11 (Exhibit Number 18 marked for 12 identification.) 13 MR. GREENE: Excuse me, Steve. On 14 my copy it looks like from hole punching there 15 may be a little bit that's not -- 16 MR. NEUWIRTH: You are correct. 17 And that is -- that that is true on this 18 document. We can certainly try to make you a 19 better copy. But that's all we have with us 20 today. But I'm not planning to ask anything 21 about the lines where the hole punching is. 22 And if you feel the witness is genuinely 23 prejudiced by this and it is not just taking 24 up time and it's going to prevent us from 25 doing this, say so. But I don't think it</p>	<p>1 agree to reduce its flock size to what it 2 would have been had Michael Foods been in the 3 certified program all along? 4 A. Yeah, I'm not sure if it came directly 5 from Gene or from the meeting that this 6 referred to, that we did have a little brief 7 meeting in Las Vegas to just talk about what 8 needed -- or where we needed to go. But at 9 some point someone suggested that's probably 10 what it would take to make this gain enough 11 acceptance on the board. 12 Q. And what was Michael Foods' reaction to 13 that proposal? 14 A. Well, we weren't -- we weren't excited 15 about it, of course. But ultimately we 16 decided if we were going to do it and take 17 care of our customers that were really asking, 18 we would have to -- we were just going to have 19 to make that move. 20 Q. And so that move that you're referring to 21 is the move to reduce your flock size to what 22 it would have been had you been in the program 23 sooner? 24 A. Well -- 25 MR. GREENE: Object to the</p>

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<p>1 characterization.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Yeah, the move we</p> <p>4 agreed to.</p> <p>5 BY MR. NEUWIRTH:</p> <p>6 Q. Do you disagree with my characterization</p> <p>7 of what was proposed to you?</p> <p>8 A. No. But what I wanted to add was what we</p> <p>9 agreed to was to adopt the new husbandry</p> <p>10 practices, which included not only all the</p> <p>11 husbandry practices but the density issue.</p> <p>12 But we didn't agree to constrain our flock</p> <p>13 size or go out and rebuild the capacity or</p> <p>14 contract it elsewhere. That's the only point</p> <p>15 of differentiation, I think.</p> <p>16 Q. Right. But you understood that one of</p> <p>17 the things that the UEP wanted to do in order</p> <p>18 for you to get a license was for you to reduce</p> <p>19 your flock size, correct?</p> <p>20 MR. GREENE: Object to the</p> <p>21 characterization.</p> <p>22 THE WITNESS: Yeah, we had to meet</p> <p>23 their density requirements --</p> <p>24 BY MR. NEUWIRTH:</p> <p>25 Q. Right.</p>	<p>1 recall getting a proposal just to have Michael</p> <p>2 Foods reduce the absolute number of hens as</p> <p>3 part of the requirements for getting a</p> <p>4 license?</p> <p>5 A. We received a proposal to reduce the</p> <p>6 density or increase the density depending on</p> <p>7 how you viewed that terminology, in other</p> <p>8 words, we had to give the birds more space in</p> <p>9 the cages on a natural flow as we rotated</p> <p>10 birds. That was the agreement.</p> <p>11 Q. Well, I didn't ask you what the agreement</p> <p>12 you ultimately signed was.</p> <p>13 A. Okay.</p> <p>14 Q. I asked you whether you recall getting a</p> <p>15 proposal prior to the license agreement from</p> <p>16 the UEP to have as a condition of getting the</p> <p>17 license Michael Foods reduce its number of</p> <p>18 layers to a level that it would have had had</p> <p>19 it been in the program sooner?</p> <p>20 A. I don't recall if that was the specific</p> <p>21 proposal because we did not cull, I don't</p> <p>22 recall -- I don't think that we culled any</p> <p>23 birds is my recollection to get to their --</p> <p>24 get to the current levels. We rotated on a</p> <p>25 flock-by-flock basis. So in other words, once</p>
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<p>1 A. -- on their timeline -- or the timeline</p> <p>2 they proposed.</p> <p>3 Q. But meeting their density requirements is</p> <p>4 different from the issue that we were just</p> <p>5 talking about that I thought you agreed with,</p> <p>6 which is that Mr. Gregory or someone from the</p> <p>7 UEP, you're not sure, you recall made a</p> <p>8 proposal that to get the license approved that</p> <p>9 you were seeking to sell certified eggs,</p> <p>10 Michael Foods should agree to reduce its flock</p> <p>11 size to what the size would have been had</p> <p>12 Michael Foods entered the UEP program earlier?</p> <p>13 MR. GREENE: Objection, confusing.</p> <p>14 BY MR. NEUWIRTH:</p> <p>15 Q. Do you find that confusing?</p> <p>16 A. Well, it's confusing from the standpoint</p> <p>17 that it only says that we had to reduce the</p> <p>18 configuration in our existing facilities as</p> <p>19 they stood at that moment in time. But it</p> <p>20 didn't mean that we weren't building at the</p> <p>21 same time. It had nothing to do with number</p> <p>22 of layers ultimately, only the density of</p> <p>23 the -- of the facilities that we were -- we</p> <p>24 were managing or owned and controlled.</p> <p>25 Q. So are you now saying that you don't</p>	<p>1 we started implementing, if the current UEP</p> <p>2 inches per -- square inches per bird at that</p> <p>3 point was 59 or 62 or whatever, I don't</p> <p>4 remember, I mean, whatever it was when we put</p> <p>5 new birds in, then they had to go in at that</p> <p>6 particular stocking density.</p> <p>7 Q. Right. So --</p> <p>8 A. But we did not reduce -- you know,</p> <p>9 category -- we didn't go in and cull birds to</p> <p>10 get to those numbers like in a month or six</p> <p>11 months or anything.</p> <p>12 Q. Now, it's correct, isn't it, that if you</p> <p>13 have a facility for layers of a certain</p> <p>14 size --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- if you simply stick with that facility</p> <p>17 and merely reduce the density of your cages by</p> <p>18 making the cages larger, by definition you</p> <p>19 will be able to have fewer hens in that space,</p> <p>20 right? If you keep the space the same and all</p> <p>21 you do is make the size of the cages bigger</p> <p>22 within that space, the space per hen, you will</p> <p>23 by definition have fewer hens in that space,</p> <p>24 correct?</p> <p>25 MR. GREENE: Object, confusing and</p>

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<p style="text-align: right;">150</p> <p>1 compound.</p> <p>2 THE WITNESS: It reduces capacity</p> <p>3 in that facility.</p> <p>4 BY MR. NEUWIRTH:</p> <p>5 Q. Right. But nothing in the UEP program</p> <p>6 said that Michael Foods could not build</p> <p>7 another facility, right?</p> <p>8 A. Yes. That's my point is we were not</p> <p>9 bound by anything in that agreement that said</p> <p>10 we couldn't go out and build ourselves or</p> <p>11 contract with other people to replace any --</p> <p>12 because we still -- again, as you recall, I</p> <p>13 think I've mentioned it multiple times, we</p> <p>14 were customer demand. Our supply chain was</p> <p>15 requiring so many eggs, pounds of liquid egg.</p> <p>16 And we were going to do that one way or the</p> <p>17 other ultimately.</p> <p>18 Q. Right. So nothing in your license</p> <p>19 agreement that you signed said that in</p> <p>20 addition to reducing the -- in addition to</p> <p>21 increasing the space per hen in the cages --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- you also could not build more</p> <p>24 facilities for layers, right, you were free to</p> <p>25 do that?</p>	<p style="text-align: right;">152</p> <p>1 Q. And you knew what you were talking about</p> <p>2 when you said that, didn't you?</p> <p>3 A. Yes. I --</p> <p>4 Q. You were referring --</p> <p>5 MR. GREENE: He was in the middle</p> <p>6 of an answer and you cut him off.</p> <p>7 MR. NEUWIRTH: Right. You're the</p> <p>8 one who did the interrupting here with an</p> <p>9 objection that was baseless based on what</p> <p>10 Mr. Baker had already testified.</p> <p>11 MR. GREENE: Right. Have you</p> <p>12 finished -- did you finish your previous</p> <p>13 answer?</p> <p>14 THE WITNESS: No. I don't even</p> <p>15 know where it went now. I lost it. I'm</p> <p>16 sorry.</p> <p>17 MR. NEUWIRTH: We can read it back</p> <p>18 so you can finish it if you would like.</p> <p>19 BY MR. NEUWIRTH:</p> <p>20 Q. The question was: And you knew what you</p> <p>21 were talking about when you said that, didn't</p> <p>22 you? You said yes. And I said: And you were</p> <p>23 referring -- and then your counsel</p> <p>24 interrupted.</p> <p>25 A. Say that last -- the last...</p>
<p style="text-align: right;">151</p> <p>1 A. Yes.</p> <p>2 Q. But, in fact, after you got your license,</p> <p>3 the number of layers at Michael Foods went</p> <p>4 down and Michael Foods did not build any new</p> <p>5 facilities, correct?</p> <p>6 A. We did not build any new facilities. But</p> <p>7 we did do some construction over the next</p> <p>8 year, three years in there. But we did not</p> <p>9 replace the total number of capacity on our</p> <p>10 own farms. But what we did do that the</p> <p>11 records would indicate or would clearly show</p> <p>12 is we committed to large-scale long-term</p> <p>13 contracts with external suppliers that more</p> <p>14 than replaced whatever bird capacity we</p> <p>15 surrendered by the agreement.</p> <p>16 Q. Correct. But Michael Foods' capacity</p> <p>17 went down and you did not build new facilities</p> <p>18 to increase Michael Foods' own capacity once</p> <p>19 you got your license from the UEP, correct?</p> <p>20 MR. GREENE: Objection, vague as to</p> <p>21 Michael Foods' capacity.</p> <p>22 BY MR. NEUWIRTH:</p> <p>23 Q. You just talked about Michael Foods'</p> <p>24 capacity, didn't you, Mr. Baker?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">153</p> <p>1 Q. I think I can fairly represent to you</p> <p>2 that the question I had asked had to do with</p> <p>3 when you were just talking about capacity --</p> <p>4 A. Okay.</p> <p>5 Q. -- you knew what you meant. And the</p> <p>6 question was: What did you mean?</p> <p>7 A. Yeah, but I'm -- can you go back beyond</p> <p>8 that because I'm not sure where -- the</p> <p>9 question was about our capacity pre --</p> <p>10 Q. So you were -- I believe you were -- I</p> <p>11 can read it back to you. But I believe you</p> <p>12 were explaining and you raised the term</p> <p>13 "capacity" --</p> <p>14 A. Okay.</p> <p>15 Q. -- when we were talking about the number</p> <p>16 of layers that could be in a particular</p> <p>17 facility if you changed the amount of space</p> <p>18 per hen. You said that obviously if you</p> <p>19 increase the minimum space per hen, that will</p> <p>20 cause your capacity to go down in that</p> <p>21 facility.</p> <p>22 Do you recall saying that?</p> <p>23 A. Yes.</p> <p>24 Q. And is it correct that what you were</p> <p>25 saying when you used the term "capacity" there</p>

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<p>1 is the number of layers that you could have in 2 that facility and that you, in fact, did have 3 in that facility? 4 A. Yes. That's what I was referring to. 5 Q. And therefore when we talk about Michael 6 Foods' capacity in terms of layers, you 7 understand that that's referring to the number 8 of layers that you had at any particular point 9 in time? 10 A. Yes. 11 Q. And do you agree that after Michael Foods 12 got the license to sell UEP Certified eggs in 13 2006, that Michael Foods' capacity in terms of 14 the number of layers went down and that 15 Michael Foods did not build new facilities to 16 increase that capacity? 17 MR. GREENE: And you're referring 18 to company-owned flocks, right? 19 Go ahead. 20 THE WITNESS: At that -- in the 21 immediate future we did an analysis, which we 22 always do, whether we're building internal or 23 we're looking outside. And so one of the 24 considerations was building more internal or 25 rebuilding that -- adding capacity, as we were</p>	<p>1 Q. And was Center Fresh a UEP member? 2 A. Yes, they were. 3 Q. And in what years do you understand that 4 Center Fresh added this new capacity? 5 A. I don't have the -- I don't have the 6 details in front of me. 7 Q. And are you confident that this was new 8 capacity that you contracted for after you 9 signed the license agreement with the UEP? 10 A. Some of it was new capacity. But 11 sometimes we had these agreements agreed to 12 prior to when we actually committed. But 13 we're always planning in seven -- 14 seven-plus-year windows. And I think -- I 15 can't -- I don't recall off the top of my head 16 if we had agreed to that one. But there were 17 other -- there's other people we agreed to 18 build, but they were coming on at that same 19 point. And then I think we had other -- other 20 contracts that we did do post commitment. 21 Like IPRO was one of the primary ones. And I 22 believe that was signed after -- again, I 23 don't have my timeline. I would have to go 24 back and look up the timeline. I don't have 25 all those facts exactly at my disposal here.</p>
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<p>1 just discussing, or outsourcing it. And we 2 chose to outsource it. But there was a 3 definite decline in some of our internal 4 capacity through the next couple, three years 5 as we implemented. 6 BY MR. NEUWIRTH: 7 Q. Right. And you chose to make that up by 8 acquiring from third parties that had existing 9 capacity they could make available to you? 10 MR. GREENE: Object to the 11 characterization. 12 THE WITNESS: No, that would not be 13 correct. Much of the outsourcing we did was 14 greenfield projects of new construction. 15 BY MR. NEUWIRTH: 16 Q. And tell me who did new construction 17 in -- tell me who did new construction in such 18 greenfield projects. 19 A. I believe the primary one we were working 20 on at that point in time was Center Fresh. 21 And I think that we added approximately 22 3.5 million layers over the course. And in 23 most -- most of the construction projects are 24 strung out over -- it's at least a two-, 25 three-year process.</p>	<p>1 Q. Besides Center Fresh and IPRO, is there 2 anybody else that you believe added new 3 capacity for Michael Foods -- to meet Michael 4 Foods' demand? 5 A. I think Golden Oval was another 6 possibility in that same general window, from 7 '05, '06, 7, 8, in that window. 8 Q. Well, '05 and part of '06 you did not 9 have this new agreement? 10 A. No. 11 Q. So do you think that Golden Oval was an 12 entity that you contracted with to create new 13 capacity to meet Michael Foods' demand after 14 the license agreement you signed with the UEP 15 in 2006? 16 A. I don't know. I don't recall the exact 17 timelines. 18 Q. And are any other companies that you 19 believe added new capacity for Michael Foods 20 during this period you've described, 2005, 21 2006, 2007, 2008? 22 A. I think there was someone else. I just 23 don't -- I don't have that -- I don't have the 24 details there. 25 Q. Now, given your role with procurement,</p>

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<p>1 would you have been the person who made these</p> <p>2 agreements for Michael Foods?</p> <p>3 A. Yes. Our process is we would go out and</p> <p>4 negotiate or look for the proposals. And then</p> <p>5 once we had negotiated an arrangement that we</p> <p>6 thought was acceptable, then we would present</p> <p>7 it to our senior management group for ultimate</p> <p>8 approval.</p> <p>9 Q. And what was the time period that was</p> <p>10 ultimately agreed to for Michael Foods to get</p> <p>11 to 100 percent compliance?</p> <p>12 A. We agreed to meet with the UEP schedule.</p> <p>13 Their phases -- they were phasing in, I think,</p> <p>14 in 18-month increments. And I think that we</p> <p>15 agreed to follow that schedule and match up.</p> <p>16 So the first thing, I think, that we did after</p> <p>17 we agreed and we formally applied was we</p> <p>18 looked at our bird schedules and replacement</p> <p>19 schedules and then we submitted those to UEP.</p> <p>20 And starting probably in the fall sometime</p> <p>21 if -- again, I don't recall the exact square</p> <p>22 inch at that moment, but wherever our birds</p> <p>23 were, the new birds that went into those</p> <p>24 facilities then matched up with the current</p> <p>25 UEP phase-in schedule. So from -- as each new</p>	<p>1 Michael Foods entered into with third parties</p> <p>2 to provide -- to provide eggs and to add</p> <p>3 capacity to do that, were these written</p> <p>4 contracts?</p> <p>5 A. Oh, yes.</p> <p>6 Q. And are these contracts that you in your</p> <p>7 position related to procurement would have in</p> <p>8 your files?</p> <p>9 A. Yes.</p> <p>10 Q. And do you know if those contracts have</p> <p>11 been produced in this litigation?</p> <p>12 A. I do not.</p> <p>13 Q. Let me hand you a document that bears the</p> <p>14 Bates number MFI0002285.</p> <p>15 (Exhibit Number 19 marked for</p> <p>16 identification.)</p> <p>17 BY MR. NEUWIRTH:</p> <p>18 Q. And the first question is: I've just</p> <p>19 handed you now what appears to be a single</p> <p>20 page of handwritten notes, do you recognize</p> <p>21 this handwriting?</p> <p>22 A. (Reviews document.) Yes. This would be</p> <p>23 my handwriting.</p> <p>24 Q. And in looking at these notes, is it</p> <p>25 correct that these are notes that you took at</p>
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<p>1 flock or each house was replaced -- and we had</p> <p>2 over 100 flocks or buildings at that point in</p> <p>3 time. So over the course of -- we were</p> <p>4 projecting about a two-year window to replace</p> <p>5 them all. And so we started -- we actually</p> <p>6 signed the agreement in '06 and, I think, by</p> <p>7 June of 2008 we completed that process of</p> <p>8 replacing all 100 of those flocks and rotating</p> <p>9 and then we matched up with the current UEP</p> <p>10 phasing.</p> <p>11 MR. NEUWIRTH: I've been told by</p> <p>12 the videographer that we're dealing with the</p> <p>13 end of the tape. So if we just want to pause</p> <p>14 for a second to let the tape close.</p> <p>15 THE VIDEOGRAPHER: We are going off</p> <p>16 the record.</p> <p>17 The time is 12:23 p.m.</p> <p>18 (Off the record.)</p> <p>19 THE VIDEOGRAPHER: We are back on</p> <p>20 the record. This marks the beginning of</p> <p>21 videotape number 3 in the deposition of Terry</p> <p>22 Baker.</p> <p>23 The time is 12:27 p.m.</p> <p>24 BY MR. NEUWIRTH:</p> <p>25 Q. Now, these contracts that you say that</p>	<p>1 some point when there were discussions between</p> <p>2 Michael Foods and the UEP about Michael Foods</p> <p>3 getting a license to sell certified eggs with</p> <p>4 some ramp-up period to get to 100 percent</p> <p>5 compliance?</p> <p>6 A. Can you repeat the --</p> <p>7 Q. Sure. In looking at these notes, is it</p> <p>8 correct that these are notes that you took at</p> <p>9 some point when there were discussions between</p> <p>10 Michael Foods and the UEP about Michael Foods</p> <p>11 getting a license to sell certified eggs with</p> <p>12 some ramp-up period to get to 100 percent</p> <p>13 compliance?</p> <p>14 A. Yes.</p> <p>15 Q. And does it look like these notes would</p> <p>16 have been taken therefore at some point in the</p> <p>17 spring or early summer of 2006?</p> <p>18 A. They would seem to suggest that would be</p> <p>19 the timeline.</p> <p>20 Q. And do you see that near the bottom</p> <p>21 there's a -- there's a statement: As</p> <p>22 suggested in my letter, the original idea we</p> <p>23 incorporated in our proposal was to market our</p> <p>24 birds not the guidelines, guaranteeing no</p> <p>25 commingling.</p>

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<p>1 I may have misread that. But if you 2 think it says something different, please 3 clarify. 4 A. Since it's my handwriting, I can tell 5 you, yeah, that's not quite what it says. 6 Q. Please clarify. 7 A. "As suggested in the..." I'm not sure 8 what that scribble -- "in the letter," I'm not 9 sure what that -- what I was saying there. 10 But "...the original idea we incorporated in 11 our proposal was to market as birds met the 12 guidelines, guaranteeing no commingling." 13 Q. And what is it that you were -- what was 14 it that you were referring to there? 15 A. We originally had proposed that as we 16 started this conversion from house to house, 17 as we rotated those birds and replaced them, 18 that as -- like either you could do it at the 19 house level or maybe it's a site level. If 20 you had one -- for example, if you could get 21 one site completely updated, that you should 22 be able to market those as UEP or ACC 23 certified. That was our proposal. And that 24 proposal was not accepted by -- as part of the 25 final agreement or approval.</p>	<p>1 of these minutes -- this is an Animal Welfare 2 Committee meeting, correct? 3 A. (Reviews document.) Yes. 4 Q. And you attended that meeting as 5 reflected on the first page? 6 A. Yes. 7 Q. And do you see that on the second page of 8 the meeting there was a motion made concerning 9 this proposal to -- that you were talking 10 about in your handwritten notes that allow 11 certified eggs from any facility that meets 12 the requirements to be sold as certified? 13 Do you see that? 14 A. Yes. 15 Q. And that was voted down in the committee 16 by a vote of seven in favor and six being 17 opposed, correct, that's what the minutes say? 18 A. That's what the minutes report, yeah. 19 MR. GREENE: Did you say it was 20 voted down? 21 BY MR. NEUWIRTH: 22 Q. I'm sorry. I'm sorry. It was voted in 23 favor. I'm sorry. Seven in favor, seven 24 opposed. 25 Do you see that?</p>
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<p>1 Q. And your view, as reflected in these 2 notes, was that that proposal would have 3 guaranteed no commingling of certified and 4 non-certified eggs, correct? 5 A. Yes. That had to be part of the package. 6 Q. But you -- what you were saying here in 7 these notes was that the proposal -- that 8 suggestion would -- that implementing it would 9 guarantee no such commingling, correct? 10 A. Correct. 11 Q. Now, you mentioned earlier that you had a 12 recollection that there was a May 2006 board 13 meeting where there was some lengthy 14 discussion about this proposal for Michael 15 Foods to get a license to sell certified eggs 16 with a phase-in to 100 percent compliance, 17 right? 18 A. Yes. 19 Q. So let me give you the minutes of that 20 board meeting which have the Bates number 21 UE0153009 to 10. 22 (Exhibit Number 20 marked for 23 identification.) 24 BY MR. NEUWIRTH: 25 Q. And do you see there on the second page</p>	<p>1 MR. GREENE: You just said seven in 2 favor, seven opposed. 3 THE WITNESS: Six opposed. 4 MR. NEUWIRTH: Okay. Let's start 5 again. 6 BY MR. NEUWIRTH: 7 Q. Do you see that there was a motion that 8 was made for the type of proposal that you had 9 talked about in your notes, which was to allow 10 eggs to be marketed as certified from any 11 facility that meets the requirements of the 12 program? 13 Do you see that? 14 A. Yes. 15 Q. And that was voted in the committee seven 16 in favor and six opposed. 17 Do you see that? 18 A. Yes. 19 Q. Now, let me hand you a document that 20 bears the Bates number MFI 2282. 21 (Exhibit Number 21 marked for 22 identification.) 23 BY MR. NEUWIRTH: 24 Q. And is it correct that what I just handed 25 you, Mr. Baker, are your handwritten notes of</p>

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<p>1 the vote that took place at the May 25th, 2006</p> <p>2 Animal Welfare Committee meeting?</p> <p>3 A. (Reviews document.) Yes. This is my</p> <p>4 tally sheet I had taken from that vote.</p> <p>5 Q. And if we look at the no votes, is Roger</p> <p>6 S, Roger Seger?</p> <p>7 A. Yeah, I think that's a reasonable</p> <p>8 assumption.</p> <p>9 Q. And do you know with which company</p> <p>10 Mr. Seger was affiliated?</p> <p>11 A. He's with Wabash Valley.</p> <p>12 Q. And you then have Mike Byron, is that</p> <p>13 correct?</p> <p>14 A. It's Mike Bynum.</p> <p>15 Q. Bynum. Mike Bynum. And do you know what</p> <p>16 company he's with?</p> <p>17 A. He is -- it was a Florida producer. I</p> <p>18 don't remember the company name off the top of</p> <p>19 my head. I apologize.</p> <p>20 Q. And then KY. Is that K.Y. Hendrix?</p> <p>21 A. Yes.</p> <p>22 Q. And which company is he with?</p> <p>23 A. Rose Acres.</p> <p>24 Q. And Joe F is Joe Fortin?</p> <p>25 A. With Moark.</p>	<p>1 Q. And he's one of the people who had</p> <p>2 previously supported your effort to eliminate</p> <p>3 the 100 percent requirement all together,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And Ryan Armstrong?</p> <p>7 A. Yeah, I don't recall. But that must be</p> <p>8 Ryan Armstrong. I wasn't sure which Ryan. It</p> <p>9 must be Ryan Armstrong. And I don't know who</p> <p>10 he was with. I don't remember.</p> <p>11 Q. Okay. And Dave T is David Thompson?</p> <p>12 A. Yes.</p> <p>13 Q. And who's he with?</p> <p>14 A. He's with Pearl Valley Egg.</p> <p>15 Q. Now, this proposal got out of the Animal</p> <p>16 Welfare Committee. But was it ever approved</p> <p>17 by the UEP?</p> <p>18 A. No. I don't believe so. I think in the</p> <p>19 minutes the previous document said there was a</p> <p>20 conference call scheduled for the board to act</p> <p>21 on this motion to ratify the approval. And I</p> <p>22 don't remember how it went down. But at</p> <p>23 that -- apparently it did not pass the board,</p> <p>24 because we did not -- we're not allowed to do</p> <p>25 this.</p>
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<p>1 Q. And Derek Yancey?</p> <p>2 A. He's with a small -- he's a small</p> <p>3 producer in Colorado. I don't recall the name</p> <p>4 of his company, but it's in Colorado.</p> <p>5 Q. And Mark O?</p> <p>6 A. That would be Mark Oldenkamp with Valley</p> <p>7 Fresh.</p> <p>8 Q. Now, on the yes side you have Tim Bebee,</p> <p>9 who's obviously with Michael Foods.</p> <p>10 Mike Gidley, who is he with?</p> <p>11 A. He was Rembrandt.</p> <p>12 Q. Glenn Hickman?</p> <p>13 A. Yes, Glenn Hickman.</p> <p>14 Q. And who is he with?</p> <p>15 A. Hickman Farms in Arizona.</p> <p>16 Q. Then you have -- is it Brian -- is that</p> <p>17 Brian Barret?</p> <p>18 A. I think it had to be Brian Barret.</p> <p>19 Q. Do you know who he's with?</p> <p>20 A. He's -- it's a Texas producer. And I</p> <p>21 can't -- the name escapes me. I'll think of</p> <p>22 it later. But I don't know it right at the</p> <p>23 moment.</p> <p>24 Q. Bob K, Bob Krouse?</p> <p>25 A. Yes.</p>	<p>1 Q. Right. So why don't I give you the</p> <p>2 minutes of the June 1st, 2006 conference call</p> <p>3 at the UEP board of directors.</p> <p>4 MR. NEUWIRTH: This has the Bates</p> <p>5 number UE153007. And we'll mark this as</p> <p>6 Baker 22.</p> <p>7 (Exhibit Number 22 marked for</p> <p>8 identification.)</p> <p>9 BY MR. NEUWIRTH:</p> <p>10 Q. And these -- oh, yeah. I'm sorry. These</p> <p>11 minutes cover two pages actually, UE0153007 to</p> <p>12 08. And do you see that these minutes show</p> <p>13 that you participated in this June 1st, 2006</p> <p>14 conference call, correct?</p> <p>15 A. (Reviews document.) Yes.</p> <p>16 Q. And the second page of the minutes show</p> <p>17 that this motion that had been approved by the</p> <p>18 Animal Welfare Committee to allow eggs to be</p> <p>19 marketed as certified from any facility that</p> <p>20 meets the certification requirements was voted</p> <p>21 down in the UEP board by a vote of 21</p> <p>22 against to ten in favor, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And the result of that vote was that</p> <p>25 if -- if Michael Foods was to sell certified</p>

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<p>1 eggs, it would have to find a way to get to</p> <p>2 100 percent compliance?</p> <p>3 A. Yes.</p> <p>4 Q. And that led to the licensing agreement</p> <p>5 that Michael Foods ultimately entered with the</p> <p>6 UEP, correct?</p> <p>7 A. Yes. The license agreement was actually</p> <p>8 part of that transitional agreement so that we</p> <p>9 could use that. Since this (indicating)</p> <p>10 didn't pass, we were able to use the licensing</p> <p>11 agreement over that approximately two-year</p> <p>12 period while we were transitioning.</p> <p>13 Q. Okay. Now, we had talked earlier about</p> <p>14 what -- a document that referred to an</p> <p>15 analysis of the impact of 100 percent --</p> <p>16 eliminating the 100 percent compliance rule.</p> <p>17 Do you recall that we looked at that and there</p> <p>18 were some boxes at the bottom of the page?</p> <p>19 A. (Nods.)</p> <p>20 Q. It's true, isn't it, that, in fact,</p> <p>21 Michael Foods had done its own assessment of</p> <p>22 the impact of 100 percent -- of being required</p> <p>23 to have 100 percent compliance to sell</p> <p>24 certified eggs, right?</p> <p>25 A. Are you saying within our own assessment</p>	<p>1 Ostrander and then your further reply that</p> <p>2 same day to Mr. Ostrander with others copied</p> <p>3 on all of those emails?</p> <p>4 Do you see that?</p> <p>5 A. (Reviews document.) Yes. Can I just</p> <p>6 have a minute to get through the rest of it?</p> <p>7 Q. Please take as much time as you need to</p> <p>8 look at the document and let me know when</p> <p>9 you're ready.</p> <p>10 A. (Reviews document.)</p> <p>11 Q. Are you ready?</p> <p>12 A. Yeah. I'm ready.</p> <p>13 Q. So is it correct that in this -- the</p> <p>14 earliest of these emails in the chain you</p> <p>15 refer to a request from Gregg Ostrander?</p> <p>16 A. (Reviews document.)</p> <p>17 Q. Do you see that, you say "As per Gregg's</p> <p>18 request"?</p> <p>19 A. Yes.</p> <p>20 Q. Gregg Ostrander, remind me who he is?</p> <p>21 A. He was the CEO of Michael Foods at that</p> <p>22 point.</p> <p>23 Q. And so it was at his request that you</p> <p>24 attached a file that you and Tim Bebee had put</p> <p>25 together about the impact of implementing the</p>
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<p>1 internally, Michael Foods?</p> <p>2 Q. Yes, within Michael Foods. You had --</p> <p>3 Michael Foods had done its own assessment of</p> <p>4 what would happen to the Michael Foods flock</p> <p>5 size if Michael Foods had to reach 100 percent</p> <p>6 compliance, right?</p> <p>7 A. Yes.</p> <p>8 Q. And you were personally involved in</p> <p>9 looking at that issue, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And at the time you looked at that issue,</p> <p>12 that was among the reasons that Michael Foods</p> <p>13 opposed the 100 percent compliance rule,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Let me give you a document bearing the</p> <p>17 Bates numbers MFI 17306 through 309. And we</p> <p>18 will mark that as Baker 23.</p> <p>19 (Exhibit Number 23 marked for</p> <p>20 identification.)</p> <p>21 BY MR. NEUWIRTH:</p> <p>22 Q. Is it correct that what we've got here on</p> <p>23 the first page is an email chain starting with</p> <p>24 an email that you sent on March 20th, 2005</p> <p>25 with a response that same day from Gregg</p>	<p>1 UEP ACC program at 100 percent of the</p> <p>2 MFI facilities, right?</p> <p>3 A. Yes.</p> <p>4 Q. And is it correct that on the page that</p> <p>5 ends with the Bates number 7308 you show that</p> <p>6 with 100 percent compliance, Michael Foods'</p> <p>7 layer capacity would have dropped by</p> <p>8 14,861,904 layers?</p> <p>9 A. That was the estimate at that time.</p> <p>10 Q. And when there's a reference to Liq Equiv</p> <p>11 Lbs, is that liquid equivalent pounds?</p> <p>12 A. Yes.</p> <p>13 Q. And what is that measurement used for in</p> <p>14 your business?</p> <p>15 A. Our common denominator is liquid whole</p> <p>16 egg equivalent pounds.</p> <p>17 Q. And is that meant to measure the content</p> <p>18 of the egg as opposed to the egg plus the</p> <p>19 shell?</p> <p>20 A. Yes. That would be the net edible liquid</p> <p>21 portion of the egg minus the shell.</p> <p>22 Q. And in doing business assessments at</p> <p>23 Michael Foods, is that measurement used more</p> <p>24 frequently than something like the number of</p> <p>25 eggs?</p>

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<p>1 A. Yes. Yes. That's our common 2 denominator. Even though we market some other 3 forms of egg in shell -- in some kind of shell 4 thing, we still ultimately come back to the 5 common denominator. 6 Q. And then you also looked at, in 2006, the 7 various financial scenarios that might play 8 out depending on what type of phase-in 9 agreement you might reach with the UEP, 10 correct? 11 A. Yes. 12 Q. And I take it that that work brought to 13 bear your various types of experience you 14 described as a controller and financial work 15 and also in your procurement position at 16 Michael Foods? 17 A. Yes. 18 Q. Let me quickly mark Baker Exhibit 24 19 bearing Bates number MFI 2148 through 2153. 20 (Exhibit Number 24 marked for 21 identification.) 22 BY MR. NEUWIRTH: 23 Q. And is it correct that what we have here 24 is an email that you sent on April 15th, 2006 25 attaching some assessments of the financial</p>	<p>1 life of a flock you always have normal 2 mortality occurring. And so most producers -- 3 or prior to UEP's guidelines, there used to be 4 more producers would take the opportunity at 5 some point in the lifecycle to actually -- 6 either in some case utilize new birds or 7 possibly take birds from another older flock 8 that was going to -- most of the flock was 9 going to go out. But if they needed a few 10 thousand of those birds, they would actually 11 take some of the those older birds and 12 backfill them into another house to regain a 13 little bit of capacity and throughput through 14 the facility. 15 Q. Now, you understood, I take it, that 16 backfilling was prohibited in the UEP 17 Certified program? 18 A. Yes. 19 Q. And were you aware that in the first 20 period when -- in the initial months after 21 Michael Foods got its license in 2006, there 22 was an inspection done where it was found that 23 Michael Foods had been backfilling? 24 A. I was not aware of that actually. 25 Q. Okay.</p>
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<p>1 impact of a conversion to a UEP Certified 2 program? 3 A. (Reviews document.) Yes. 4 Q. And is it correct that you were involved 5 in the preparation of these different 6 materials that are attached to this email? 7 A. Yes. 8 Q. And do you know what was ever done with 9 these materials within the company? 10 A. They were just used for some of the 11 analysis and forecasting projecting more from 12 the financial side of the ledger as much as 13 anything about what impacts would be on the 14 following year or years. And also it helped 15 us determine from a sourcing standpoint or 16 that deficit that was going to be created 17 where -- what we needed to be looking at and 18 contemplating as far as replacement. 19 Q. Now, do you know what the term 20 "backfilling" refers to? 21 A. Yes. 22 Q. What is backfilling? 23 A. My interpretation of backfilling, and it 24 may be different depending which producer you 25 talk to, but my interpretation is over the</p>	<p>1 A. That would have been on the farm, more 2 directly on the farm management group 3 probably. Maybe. I don't recall, though. 4 Q. Let me just give you this document 5 bearing the Bates number MFI 149189. 6 (Exhibit Number 25 marked for 7 identification.) 8 BY MR. NEUWIRTH: 9 Q. And do you see that what I've just handed 10 you as Baker Exhibit 25 is an email that Gene 11 Gregory sent to you and Mr. Bebee on 12 January 12th, 2007 letting you know that there 13 had been an animal welfare audit of one of 14 Michael Foods' facilities and the audit had 15 failed because of backfilling -- or Michael 16 Foods had failed the audit because of 17 backfilling? 18 Do you see that? 19 A. (Reviews document.) Yes. 20 Q. Did you have an understanding that 21 backfilling was a problem when you first got 22 started on the UEP Certified program in 2006? 23 MR. GREENE: Objection, vague. 24 THE WITNESS: I don't remember the 25 exact implementation. I remember when there</p>

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<p>1 was a board vote at some point to add that</p> <p>2 prohibition into the program. I just don't</p> <p>3 remember the timeline again, if it was there</p> <p>4 when we first signed up and we -- we obviously</p> <p>5 still did it at this point in time and it was</p> <p>6 an oversight or what. But yeah, I do remember</p> <p>7 that there was a rule. I just don't</p> <p>8 remember --</p> <p>9 BY MR. NEUWIRTH:</p> <p>10 Q. I take it from what you said before that,</p> <p>11 putting aside the UEP program as a general</p> <p>12 matter, backfilling can be deficient for a</p> <p>13 producer?</p> <p>14 A. Yes. I think that's -- that was a common</p> <p>15 practice. But I also know that in talking to</p> <p>16 the Animal Welfare Committee -- the Scientific</p> <p>17 Advisory Committee, particularly</p> <p>18 Dr. Armstrong -- I mean, that was a -- when</p> <p>19 that question really was posed to them, they</p> <p>20 had a pretty definite feeling as it relates to</p> <p>21 true animal welfare, that it was not a good</p> <p>22 practice and should be discontinued. And I</p> <p>23 think that's what -- that's what ultimately</p> <p>24 funneled into the UEP, to do -- to prohibit</p> <p>25 that practice only under certain conditions.</p>	<p>1 Certified program, right?</p> <p>2 A. Yes.</p> <p>3 Q. And you testified earlier that you even</p> <p>4 had some customers like McDonald's that had</p> <p>5 their own programs for eggs that would meet</p> <p>6 animal welfare guidelines that were different</p> <p>7 from the UEP Certified program, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And I take it that Michael Foods</p> <p>10 supported these efforts to come up with an</p> <p>11 alternative, in part, because Michael Foods</p> <p>12 was not satisfied with the UEP program for the</p> <p>13 reasons we've talked about today?</p> <p>14 A. Yes. We were always intent on keeping</p> <p>15 our options open or have alternatives if need</p> <p>16 be.</p> <p>17 Q. And, in fact, Michael Foods continued to</p> <p>18 work with Mr. Klippen even after it got the</p> <p>19 license in 2006 to look at alternatives to the</p> <p>20 UEP program, correct?</p> <p>21 A. For a time. I don't remember -- recall</p> <p>22 the exact time period. But yes, there was a</p> <p>23 period where we did continue to work with Ken</p> <p>24 Klippen.</p> <p>25 Q. Now, do you remember Mr. Klippen</p>
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<p>1 Q. And did you vote in favor of banning</p> <p>2 backfilling?</p> <p>3 A. I think I may have. I don't remember for</p> <p>4 certain. But I believe I did because it was</p> <p>5 really proposed to us as a true animal</p> <p>6 welfare. So --</p> <p>7 Q. And did Michael Foods eventually stop</p> <p>8 backfilling --</p> <p>9 A. Yes.</p> <p>10 Q. -- to comply with the program?</p> <p>11 A. Yes, we did.</p> <p>12 Q. And were you personally involved in</p> <p>13 making sure that happened?</p> <p>14 A. Yes -- well, not personally involved I</p> <p>15 know. But I know that Mr. Bebee and his team</p> <p>16 definitely changed the practice.</p> <p>17 Q. Now, are you familiar with someone named</p> <p>18 Ken Klippen?</p> <p>19 A. Yes.</p> <p>20 Q. And he was someone who was developing an</p> <p>21 alternative to the UEP Certified program,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And, in fact, Michael Foods worked with</p> <p>25 him to look at alternatives to the UEP</p>	<p>1 complaining to you that -- that the UEP was</p> <p>2 trying to thwart his efforts to develop an</p> <p>3 alternative?</p> <p>4 A. Yes, I remember some conversation.</p> <p>5 Q. And did you take any action in response</p> <p>6 to those concerns that Mr. Klippen expressed?</p> <p>7 A. I don't recall that we did anything</p> <p>8 specifically. If you're -- I'm not sure what</p> <p>9 you're suggesting that we would've --</p> <p>10 Q. Well, I'm not suggesting anything.</p> <p>11 A. Okay.</p> <p>12 Q. I'm just asking whether you did or did</p> <p>13 not?</p> <p>14 A. I don't think that we did, no.</p> <p>15 Q. And do you know how it came to be that</p> <p>16 Michael Foods eventually stopped working with</p> <p>17 Mr. Klippen as you just noted?</p> <p>18 A. I don't recall the exact moment or if</p> <p>19 there was an event or an occurrence that</p> <p>20 triggered the decision. But at some point,</p> <p>21 yeah, we did discontinue that relationship.</p> <p>22 Q. So let me show you an October 11th, 2007</p> <p>23 email that Mr. Klippen sent to you, Mr. Bebee</p> <p>24 and Mr. Catherman. And we'll mark that as</p> <p>25 Exhibit 26.</p>

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<p>1 (Exhibit Number 26 marked for 2 identification.) 3 MR. DAVIS: Excuse me. Can we get 4 the Bates number, please? 5 MR. NEUWIRTH: MFI 5090. 6 BY MR. NEUWIRTH: 7 Q. And just my only question is, Mr. Baker: 8 Does looking at this email refresh your 9 recollection in any way about the timing of 10 when UEP may have -- I'm sorry, when Michael 11 Foods may have stopped actively working with 12 Mr. Klippen on alternatives? 13 A. I need a minute. 14 Q. Take as much time as you want. 15 A. Okay. All right. (Reviews document.) 16 Okay. 17 Q. Does looking at this refresh your 18 recollection in any way about the general 19 timing of when Michael Foods may have ended 20 active work with Mr. Klippen on an alternative 21 to the UEP Certified program? 22 A. Yes and no. I don't know -- I'm still 23 not sure when we terminated, I guess. I'm 24 just not -- I'm drawing a blank. So -- but 25 this doesn't really help me there necessarily</p>	<p>1 But we always were constantly, you know, 2 trying to stay out of the -- the personal 3 side. And that's what he's -- I'm not saying 4 these weren't real things that he was 5 encountering. But we just weren't going to 6 get involved in that or tried to stay out of 7 it. 8 Q. And were these personal issues issues 9 about how they interacted with each other, or 10 was it something -- 11 A. Well, see, Ken was a former UEP member -- 12 or a UEP staff person. And when he left 13 UEP -- he left voluntarily, but there was -- 14 it was not apparently a -- a real good 15 parting, I guess, or there was some bitterness 16 there. 17 Q. And do you ever recall hearing around the 18 time of this email that Mr. Gregory had spoken 19 to Wal-Mart to try to discourage it from using 20 Mr. Klippen's alternative program? 21 A. I think that I did hear that from Beth 22 Schnell. 23 Q. At Sparboe? 24 A. Yes, at Sparboe. 25 Q. Was Michael Foods ever a member of the</p>
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<p>1 I don't think. 2 Q. Do you recall whether the UEP concerns 3 about all of this were a factor in Michael 4 Foods' decision to stop actively working with 5 Mr. Klippen to develop an alternative? 6 A. Oh. No, I don't recall that as being the 7 issue. 8 Q. What do you recall the issue being? 9 A. Well, I don't know -- I don't remember -- 10 I think we just -- I think there were other 11 issues. It just became less of a need for us 12 at that point. But again, I'm just -- I'm not 13 sure. 14 And then the other -- I mean, the other 15 thing on the email, the subject matter of the 16 email -- or not that subject matter but in his 17 first line here on the email where he says "to 18 rise above the fray," we were trying to get 19 him to -- there were some personal issues 20 there between he and Mr. Gregory, understood 21 the issues and understood the whys, but it 22 really had nothing to do with our business. 23 And it was a business decision. And that's 24 what we kept reminding Ken of. He's a very 25 talented guy and he did good things for us.</p>	<p>1 USEM? 2 A. U.S. Egg Marketers? 3 Q. Yes. 4 A. No. 5 Q. And did you understand that U.S. Egg 6 Marketers did work relating to exports? 7 A. Yes. 8 Q. And did Michael Foods between -- from 9 2004 to the present, to your knowledge, ever 10 export eggs it had produced in the United 11 States for sale in a foreign country? 12 A. Well -- okay. We are an 13 international marketer -- Michael Foods, we 14 have a whole division that is an 15 international, an export business. So yes, we 16 do export egg products, not necessarily shell, 17 but we don't preclude doing shell if it was 18 for one of our customers and arrangements 19 could be made. 20 Q. And those are exports of eggs and egg 21 products that are produced in the United 22 States -- 23 A. Yes. 24 Q. -- that might be sold elsewhere? 25 A. Yes.</p>

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<p>1 Q. And do you have any understanding of why, 2 given that Michael Foods does at least some 3 exporting, Michael Foods did not become a 4 member of the USEM? 5 A. It was our -- my recommendation that we 6 not participate in -- and that recommendation 7 actually was even prior to me. We did -- even 8 in the '90s or I don't even know how long they 9 were there we did not participate with them. 10 Q. And do you recall what the reason was for 11 that? 12 A. We felt it was almost like a conflict 13 with our own international egg products 14 business. And so that's why we chose to stay 15 out of that. 16 Q. And what was the nature of the conflict 17 that you saw? 18 A. Well, when they were -- there were times 19 we felt -- just our perception was that when 20 they were exporting shell eggs, that they were 21 actually competing with our egg products 22 sales. Some of the same people were buying 23 those shell eggs instead of buying our egg 24 products. So it was a direct competitive 25 issue.</p>	<p>1 directly from USEM about what was happening at 2 the USEM? 3 A. No. I don't believe that we did. 4 MR. GREENE: Say, Steve, we're at 5 1:10 now. Is this an appropriate time for a 6 lunch break? 7 MR. NEUWIRTH: Sure. Like I said, 8 whenever you want a break, you can have one. 9 THE VIDEOGRAPHER: We are going off 10 the record. 11 The time is 1:10 p.m. 12 (Lunch break taken at 1:10 p.m.) 13 14 AFTERNOON SESSION, 1:58 p.m. 15 16 THE VIDEOGRAPHER: We are back on 17 the record. 18 The time is 1:58 p.m. 19 (Exhibit Number 27 marked for 20 identification.) 21 BY MR. NEUWIRTH: 22 Q. The court reporter has handed you a 23 document that we've marked as Baker 27. It 24 has the Bates number MFI 43595. And do you 25 see that it's an email that Lowell Ostrand</p>
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<p>1 Q. And were there any concerns at Michael 2 Foods that the exports by the USEM were not 3 necessarily meant to meet actual foreign 4 market demand but instead were designed to 5 reduce the number of eggs for sale in the 6 United States? 7 MR. GREENE: Objection, confusing. 8 BY MR. NEUWIRTH: 9 Q. Were you confused by that question? 10 A. A little bit. Can you -- 11 Q. Okay. Did you ever have an understanding 12 that USEM was exporting eggs for the primary 13 purpose of reducing the number of eggs that 14 would be available for sale in the United 15 States? 16 A. I think that was -- I think that was 17 general knowledge that that was the reason or 18 at least I thought it was. But again, we 19 weren't members so we didn't know what their 20 objectives or their stated purpose was really. 21 But... 22 Q. Did you keep track of what USEM was doing 23 in terms of exports? 24 A. Yes, we did. 25 Q. And did you ever receive information</p>	<p>1 sent to you on October 19th, 2007? 2 Do you see that? 3 A. (Reviews document.) Yes. 4 Q. And who is Mr. Ostrand? 5 A. He's part of my staff in egg procurement 6 for Michael Foods. 7 Q. Do you see that there's an email below 8 that that you sent to Mr. Catherman and 9 Mr. Ostrand saying: Yesterday, USEM meeting 10 was supporting another quick shell export as 11 soon as possible. Last night I was with Norm 12 Stocker and he was not happy. 13 Do you see that? 14 A. Yes, I do. 15 Q. Do you recall how you learned about this 16 USEM meeting and what was happening there? 17 A. I believe this was -- this was at the UEP 18 annual meeting. And so there was much 19 conversation in the hallways about that they 20 were talking of another shell export. 21 Q. Okay. And did you typically pick up from 22 what was going on at the UEP generally what 23 was happening in the USEM? 24 A. Sometimes. It just depended, you know. 25 There's only normally three UEP meetings per</p>

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<p>1 year generally or in-person meetings. So I</p> <p>2 just -- you know, what happens -- if -- if</p> <p>3 USEM was having to contemplate something at</p> <p>4 that moment, then there might have been some</p> <p>5 conversation, which was probably -- I think</p> <p>6 was the case here. I think this was in</p> <p>7 Chicago actually.</p> <p>8 Q. So we were talking before about</p> <p>9 Mr. Klippen and the alternative program,</p> <p>10 animal welfare program that he was developing</p> <p>11 with Michael Foods' support for some period of</p> <p>12 time. Were you personally involved in any of</p> <p>13 the communications with Mr. Klippen about that</p> <p>14 program that he was developing?</p> <p>15 A. Toby Catherman, who works for me -- or</p> <p>16 worked for me at that time, was -- was our</p> <p>17 lead working directly. There was a small</p> <p>18 group of other producers, I think, working</p> <p>19 with Ken. And so I think Toby was our</p> <p>20 designee on the committee for a lot of the</p> <p>21 actual discussion. But certainly everything</p> <p>22 came back through me.</p> <p>23 Q. Right. And did you understand that</p> <p>24 the -- that what Mr. Klippen was doing was</p> <p>25 creating a science-based animal welfare</p>	<p>1 of foundation stands.</p> <p>2 MR. NEUWIRTH: So let me just make</p> <p>3 sure I understand. It's your position today</p> <p>4 that the topics that you are -- that this</p> <p>5 witness is here to cover does not include that</p> <p>6 one?</p> <p>7 MR. GREENE: Yes. I don't have the</p> <p>8 letter. If you have the letter, there is a --</p> <p>9 it specifically indicates the witness</p> <p>10 designated to testify about the decision to</p> <p>11 join UEP certified is Mr. Ostrander.</p> <p>12 MR. NEUWIRTH: Okay.</p> <p>13 BY MR. NEUWIRTH:</p> <p>14 Q. Did you ever hear from -- I'm now asking</p> <p>15 you in your personal capacity as yourself --</p> <p>16 A. Okay.</p> <p>17 Q. -- not as Michael Foods. Did you ever</p> <p>18 hear from Mr. Ostrander why he decided that</p> <p>19 Michael Foods should join the UEP Certified</p> <p>20 program in 2006?</p> <p>21 A. I don't think that I did.</p> <p>22 Q. Did you have any understanding in 2006</p> <p>23 about why Mr. Ostrander determined that UEP --</p> <p>24 that Michael Foods should join the UEP</p> <p>25 Certified program?</p>
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<p>1 program?</p> <p>2 A. Yes.</p> <p>3 Q. Earlier today you -- earlier today you</p> <p>4 had mentioned that you personally were not the</p> <p>5 one at Michael Foods who made the ultimate</p> <p>6 decision to enter the agreement with the UEP</p> <p>7 in 2006 to join the certified program,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Who was it that made that ultimate</p> <p>11 decision?</p> <p>12 A. The ultimate decision was Gregg</p> <p>13 Ostrander, the CEO of Michael Foods.</p> <p>14 Q. And what was the reason that</p> <p>15 Mr. Ostrander decided to have UEP -- to have</p> <p>16 Michael Foods join the certified program in</p> <p>17 2006?</p> <p>18 MR. GREENE: Objection, lack of</p> <p>19 foundation.</p> <p>20 BY MR. NEUWIRTH:</p> <p>21 Q. Well, you're here as a 30(b)(6) witness,</p> <p>22 aren't you, on the implementation of the UEP</p> <p>23 program, right?</p> <p>24 MR. GREENE: On the implementation</p> <p>25 but not the decision. So my objection on lack</p>	<p>1 MR. GREENE: Objection, calls for</p> <p>2 speculation.</p> <p>3 BY MR. NEUWIRTH:</p> <p>4 Q. Your understanding is not speculation.</p> <p>5 It's a question about your own understanding</p> <p>6 is the only question.</p> <p>7 MR. GREENE: Right.</p> <p>8 BY MR. NEUWIRTH:</p> <p>9 Q. Do you, Terry Baker, as a person familiar</p> <p>10 with your own understandings, have an</p> <p>11 understanding of why Mr. Ostrander determined</p> <p>12 in 2006 that Michael Foods should at that time</p> <p>13 join the UEP Certified program?</p> <p>14 A. I think there's only one reason and it's</p> <p>15 to meet customer demand. That was my thought.</p> <p>16 It was all customer driven over and over</p> <p>17 again. It's always customer driven for us.</p> <p>18 MR. NEUWIRTH: As counsel for the</p> <p>19 direct purchaser class plaintiffs, I have no</p> <p>20 further questions at this time and I am going</p> <p>21 to give the floor to Mr. Kinney, who is here</p> <p>22 for the direct action plaintiffs.</p> <p>23</p> <p>24</p> <p>25 (Next page, please.)</p>

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<p>1 EXAMINATION</p> <p>2</p> <p>3 BY MR. KINNEY:</p> <p>4 Q. Mr. Baker, I thought we were off the</p> <p>5 record. We remained on the record. As I said</p> <p>6 this morning, my name is John Kinney. I</p> <p>7 represent some of the direct action</p> <p>8 plaintiffs.</p> <p>9 I understand that you are the Michael</p> <p>10 Foods designee for some additional topics that</p> <p>11 we didn't talk about this morning. And I've</p> <p>12 asked you to take a look at what was marked as</p> <p>13 Baker Exhibit 1, the Deposition Notice. Is it</p> <p>14 your understanding that you are the designee</p> <p>15 for topic number 2, Capper-Volstead?</p> <p>16 A. I don't believe so.</p> <p>17 MR. KINNEY: He is.</p> <p>18 MR. GREENE: Yes, he is.</p> <p>19 THE WITNESS: Oh.</p> <p>20 MR. GREENE: You know, the -- you</p> <p>21 know, when Mr. Aranoff was examining the</p> <p>22 witnesses in the past, this was always one</p> <p>23 of -- the letter that we sent identifying</p> <p>24 topics was always one of the earlier exhibits.</p> <p>25 So unfortunately, you guys haven't put the</p>	<p>1 A. UEP -- for us, for Michael Foods, UEP is</p> <p>2 an informational -- and it also is our contact</p> <p>3 in a lot of cases with regulatory. Regulatory</p> <p>4 being USDA, EPA. On the farm production side</p> <p>5 there's many issues that come up. It's -- in</p> <p>6 fact, EPA is one of our favorite topics at</p> <p>7 meetings. And so there's lobbying that occurs</p> <p>8 through UEP with regulatory. And that's, in</p> <p>9 fact, why we have the May Washington meeting.</p> <p>10 Q. Other than as a contact on regulatory</p> <p>11 issues and for lobbying, does Michael Foods</p> <p>12 use any other UEP services?</p> <p>13 A. Well, clearly we're in the United --</p> <p>14 we're in the UEP Certified program currently.</p> <p>15 But you don't have to be a member to</p> <p>16 participate in that program. We -- it so</p> <p>17 happens we are. But just in general I think</p> <p>18 that covers most of what our purpose is.</p> <p>19 Q. Does UEP process its members' output?</p> <p>20 A. I'm not sure what -- I'm not clear.</p> <p>21 Q. The members of UEP to the extent that</p> <p>22 they produce shell eggs or processed egg</p> <p>23 products, is UEP engaged in processing any of</p> <p>24 the things that the members produce?</p> <p>25 A. No, not that I'm aware of.</p>
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<p>1 letter in front of him and I think it's</p> <p>2 confusing the witness. But go ahead and</p> <p>3 proceed as you see fit.</p> <p>4 MR. KINNEY: All right.</p> <p>5 BY MR. KINNEY:</p> <p>6 Q. Do you understand that you're also the</p> <p>7 designee for topic 17, contacts with United</p> <p>8 Potato Growers?</p> <p>9 A. Yes, that one I recall.</p> <p>10 Q. And what about number -- topic 26, UEP</p> <p>11 functions and services?</p> <p>12 A. I'm -- I'll take your -- I don't recall</p> <p>13 about that list.</p> <p>14 Q. All right. Okay. Let's try not to make</p> <p>15 it any more confusing.</p> <p>16 What is United Egg Producers?</p> <p>17 A. My understanding is it -- I've always</p> <p>18 believed it's an agricultural cooperative</p> <p>19 that's organized under the rules of the</p> <p>20 Capper-Volstead Act.</p> <p>21 Q. And what's that understanding based on?</p> <p>22 A. Just from attending meetings, not</p> <p>23 personal research, just from being at meetings</p> <p>24 and listening to some discussion.</p> <p>25 Q. What does UEP do?</p>	<p>1 Q. Does UEP sell the members' output?</p> <p>2 A. I'm not real sure. We don't participate</p> <p>3 in that. They do have a division, I believe,</p> <p>4 that brokers some transactions in the shell</p> <p>5 egg world. We as a company do not -- have</p> <p>6 never utilized that function. So I'm not real</p> <p>7 up on that, I guess.</p> <p>8 Q. Does UEP act as a bargaining agent for</p> <p>9 its members in negotiating prices with</p> <p>10 customers?</p> <p>11 MR. DAVIS: Objection, lack of</p> <p>12 foundation.</p> <p>13 THE WITNESS: Not that I'm aware</p> <p>14 of.</p> <p>15 BY MR. KINNEY:</p> <p>16 Q. Who belongs to UEP?</p> <p>17 A. Egg producers.</p> <p>18 Q. Can any egg producer join UEP?</p> <p>19 A. I think so.</p> <p>20 Q. Are you familiar with the Capper-Volstead</p> <p>21 Act?</p> <p>22 A. Not intimately, no.</p> <p>23 Q. Are you familiar with it generally?</p> <p>24 A. Generally, yes.</p> <p>25 Q. And when did you first learn about</p>

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<p>1 Capper-Volstead?</p> <p>2 A. Oh, in the mid 2000s, like in the five,</p> <p>3 six -- you know, I started becoming being</p> <p>4 exposed to different conversations when I</p> <p>5 was -- once I started on the board as a board</p> <p>6 of directors member.</p> <p>7 Q. Was there any particular person or</p> <p>8 persons that you learned about Capper-Volstead</p> <p>9 from?</p> <p>10 A. I don't recall anybody specifically right</p> <p>11 at the moment.</p> <p>12 Q. What's your general understanding of what</p> <p>13 Capper-Volstead is or what it does?</p> <p>14 A. I've been -- just my own personal</p> <p>15 experience says that it -- it allows for</p> <p>16 actually operating with marketing and is</p> <p>17 possible to manage supply as well as to do</p> <p>18 other industry functions as I've outlined</p> <p>19 earlier.</p> <p>20 Q. And what's your understanding of how</p> <p>21 Capper-Volstead applies to Michael Foods'</p> <p>22 membership in UEP?</p> <p>23 A. Again, I'm not sure I understand. If you</p> <p>24 say -- could you repeat the question?</p> <p>25 Q. Do you have any understanding that</p>	<p>1 Capper-Volstead?</p> <p>2 A. Well, no, not necessarily, not -- other</p> <p>3 than just certain -- like there's -- you know,</p> <p>4 you can only have members in the room when</p> <p>5 you're having discussions. Some of the basic</p> <p>6 premises, those things I think I have a sense</p> <p>7 for. But beyond that, no.</p> <p>8 Q. If you have questions regarding</p> <p>9 Capper-Volstead, who do you ask?</p> <p>10 A. We would either go to staff or today we</p> <p>11 have our general counsel, UEP's general</p> <p>12 counsel, Randon Wilson.</p> <p>13 Q. And how long has Randon Wilson been UEP's</p> <p>14 general counsel?</p> <p>15 A. I don't know the exact period. Sometime</p> <p>16 since 2008. It was -- you know, it's in that</p> <p>17 range, but I don't know the exact year.</p> <p>18 Q. Under Capper-Volstead, can two or more</p> <p>19 companies agree on the number of eggs they'll</p> <p>20 produce?</p> <p>21 A. Oh. I don't know.</p> <p>22 Q. Under -- absent Capper-Volstead, can two</p> <p>23 or more companies agree on the number of eggs</p> <p>24 they'll produce?</p> <p>25 MR. GREENE: Objection, lack of</p>
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<p>1 Michael Foods gets any benefit under</p> <p>2 Capper-Volstead or claims to get any benefit</p> <p>3 under Capper-Volstead for its participation in</p> <p>4 UEP?</p> <p>5 MR. GREENE: Objection, confusing.</p> <p>6 THE WITNESS: I'm not sure I</p> <p>7 understand. But I'll answer the question. I</p> <p>8 think from our personal -- my personal</p> <p>9 experience and my association, most of the</p> <p>10 things that we value in UEP are not related to</p> <p>11 some of the unique things that I understand</p> <p>12 are possible with Capper-Volstead.</p> <p>13 BY MR. KINNEY:</p> <p>14 Q. And the things that you value are the</p> <p>15 regulatory contacts, the lobbying?</p> <p>16 A. Yes.</p> <p>17 Q. What's your general understanding of the</p> <p>18 scope of permissible conduct under</p> <p>19 Capper-Volstead?</p> <p>20 A. I'm not really clear exactly what -- how</p> <p>21 far it goes or what it really entails. I have</p> <p>22 to --</p> <p>23 Q. Do you have in mind -- do you have any</p> <p>24 general understanding of anything that you</p> <p>25 absolutely cannot do even under</p>	<p>1 foundation.</p> <p>2 THE WITNESS: Yeah, I'm not sure</p> <p>3 under what context you're referring to. I</p> <p>4 mean, what --</p> <p>5 BY MR. KINNEY:</p> <p>6 Q. Period.</p> <p>7 A. I mean --</p> <p>8 Q. Can -- well, let's use something that</p> <p>9 might be more familiar. One of your primary</p> <p>10 competitors is Cargill Kitchen Solutions,</p> <p>11 right?</p> <p>12 A. Okay. Yes.</p> <p>13 Q. Okay. So can Michael Foods and Cargill</p> <p>14 Kitchen Solutions agree on the volume of</p> <p>15 pre-cooked eggs that they'll produce?</p> <p>16 MR. GREENE: Objection, calls for a</p> <p>17 legal conclusion.</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. Your understanding.</p> <p>20 A. No, they're not members.</p> <p>21 Q. Correct. And they're not protected by</p> <p>22 Capper-Volstead, correct?</p> <p>23 A. That's right. That would be the reason,</p> <p>24 yeah, they're not members, they're not</p> <p>25 producers.</p>

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<p>1 Q. And under Capper-Volstead, can companies</p> <p>2 agree to limit the size of their layer hen</p> <p>3 flocks?</p> <p>4 A. I'm not sure. I don't know.</p> <p>5 Q. Have you ever asked anyone?</p> <p>6 A. No.</p> <p>7 Q. Have you ever asked anyone for</p> <p>8 information about Capper-Volstead?</p> <p>9 A. Maybe for a brief description at a</p> <p>10 meeting we talked about it at real high level,</p> <p>11 just some of the basics. But as to any</p> <p>12 details and what-if scenarios, no, I have not.</p> <p>13 Q. Has anyone at Michael Foods, any of your</p> <p>14 colleagues at Michael Foods like Mr. Bebee or</p> <p>15 Mr. Catherman, have they ever asked you for</p> <p>16 information about Capper-Volstead?</p> <p>17 A. I don't recall that they did necessarily.</p> <p>18 Q. Have you attended any seminars or</p> <p>19 presentations regarding Capper-Volstead?</p> <p>20 A. The closest that I would come to that was</p> <p>21 there was a representative from another</p> <p>22 Capper-Volstead group that presented -- did a</p> <p>23 general presentation to the membership, UEP,</p> <p>24 sometime in -- I can't remember the year,</p> <p>25 probably in 2007, eight, somewhere in that</p>	<p>1 Q. And approximately how many of those have</p> <p>2 you attended?</p> <p>3 A. Fifteen, give or take.</p> <p>4 Q. When was the last time you went to one of</p> <p>5 those conferences?</p> <p>6 A. In 2013.</p> <p>7 Q. Was that in Las Vegas?</p> <p>8 A. Yes.</p> <p>9 Q. At any of the Urner Barry executive</p> <p>10 conferences that you belong to have there been</p> <p>11 presentations regarding Capper-Volstead?</p> <p>12 A. Not to my recollection.</p> <p>13 Q. And do you understand that</p> <p>14 Capper-Volstead applies to only farmers or</p> <p>15 producers?</p> <p>16 A. Yes. I understand roughly that's --</p> <p>17 that's how it was explained to me, yes.</p> <p>18 Q. And do you know who qualifies as an egg</p> <p>19 producer under Capper-Volstead?</p> <p>20 A. No, I don't have the definition down.</p> <p>21 Q. What's your understanding of what it</p> <p>22 means to be an egg producer for</p> <p>23 Capper-Volstead purposes?</p> <p>24 A. Just my understanding is it's an egg --</p> <p>25 you have to be an egg producer. And beyond</p>
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<p>1 vicinity.</p> <p>2 Q. What was the other co-op?</p> <p>3 A. It was -- I think it was the United</p> <p>4 Potato Growers.</p> <p>5 Q. Does Michael Foods belong to any entity</p> <p>6 other than UEP that claims to be a</p> <p>7 Capper-Volstead cooperative?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. You're familiar with Urner Barry,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And what does Urner Barry do regarding</p> <p>13 the production and sale of eggs or egg</p> <p>14 products?</p> <p>15 A. Nothing that I know of.</p> <p>16 Q. And is it involved in issuing pricing</p> <p>17 information for shell eggs and egg products?</p> <p>18 A. Yes. I -- yes. My understanding, the</p> <p>19 way we use -- we utilize, we subscribe to</p> <p>20 their services. They are a price reporting</p> <p>21 service.</p> <p>22 Q. Have you attended any of the executive</p> <p>23 conferences for the egg and poultry industry</p> <p>24 that Urner Barry sponsors?</p> <p>25 A. Yes, I have.</p>	<p>1 that, I don't know what -- I don't know</p> <p>2 anything else definitionally.</p> <p>3 Q. So if you bought a dozen eggs but sold</p> <p>4 2 million dozen eggs, you would still be an</p> <p>5 egg producer?</p> <p>6 MR. GREENE: Objection, confusing.</p> <p>7 THE WITNESS: I'm not sure -- yeah,</p> <p>8 I don't understand.</p> <p>9 BY MR. KINNEY:</p> <p>10 Q. All right. Say you owned enough hens</p> <p>11 that they produced a million dozen eggs, okay,</p> <p>12 and you also -- you sold in the market</p> <p>13 100 million dozen eggs, are you an egg</p> <p>14 producer under Capper-Volstead?</p> <p>15 MR. GREENE: Objection, lack of</p> <p>16 foundation.</p> <p>17 THE WITNESS: I don't know. That's</p> <p>18 a -- that must be a legal -- I don't know.</p> <p>19 BY MR. KINNEY:</p> <p>20 Q. You don't know?</p> <p>21 A. No, I don't know.</p> <p>22 Q. All right. Let me show you what's been</p> <p>23 marked as --</p> <p>24 MR. KINNEY: Let's mark this as</p> <p>25 Baker Exhibit A.</p>

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<p>1 (Exhibit A marked for 2 identification.) 3 MR. KINNEY: And it's a document 4 that's dated December 5, 2003. It's coded 5 MFI0001880 and 1881. 6 BY MR. KINNEY: 7 Q. Mr. Baker, directing your attention -- 8 this is a letter from Chad Gregory to UEP 9 members from December 5, 2003. And as stated 10 in this letter with the attachment, correct, 11 that the UEP was asking members to certify 12 that more than 50 percent of all eggs handled 13 by our [sic] company, including eggs produced, 14 contracted or purchased, are produced on farms 15 owned or operated by our [sic] company? 16 Do you see that, that they were 17 requesting -- 18 A. Yes. 19 Q. -- that certification? 20 A. Yes. 21 Q. Who at Michael Foods was responsible for 22 responding to these kinds of requests 23 regarding Capper-Volstead from UEP? 24 A. It would be myself or Tim Bebee. 25 Q. And from time to time did you provide</p>	<p>1 membership agreement that you signed for UEP 2 on behalf of Michael Foods? 3 A. (Reviews document.) Yes, I do. 4 Q. And is that your handwriting and your 5 signature at the bottom of Exhibit B? 6 A. Yes. 7 Q. All right. And, correct, that Exhibit B 8 includes the certification that you signed, "I 9 hereby certify that all of the above 10 information is correct and that over 11 50 percent of all eggs handled by our company, 12 including eggs produced, contracted or 13 purchased, are produced on farms owned or 14 operated by our company"? That's the 15 certification that you signed? 16 A. Yes, I signed it. But I was signing for 17 everything above it. I guess I didn't -- I 18 either overlooked that or I didn't understand 19 exactly what that was telling me, I guess. 20 Q. Is it your unusual practice to sign 21 things that you haven't read or don't 22 understand? 23 MR. GREENE: Objection, 24 argumentative. 25 THE WITNESS: No, it is not my</p>
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<p>1 certification similar to the one that's 2 included in Exhibit A to UEP? 3 A. I have not -- I'm not familiar with this 4 particular version or this form. I don't 5 recall seeing it. But it's not that I didn't. 6 I just don't recall it. 7 Q. Do you know that you -- whether you've 8 ever signed a similar certification that 9 you've provided on behalf of Michael Foods to 10 UEP? 11 A. I think I did. 12 Q. So this isn't -- the form of the 13 certification is something that you have seen 14 before and actually signed and returned to 15 UEP, correct? 16 A. Yes. Just not this version. 17 (Exhibit B marked for 18 identification.) 19 BY MR. KINNEY: 20 Q. Let me show you what's been marked as 21 Exhibit B. And Exhibit B is a one-page 22 document. It has the caption United Egg 23 Producers Membership Agreement. It's coded 24 UE0148015. 25 And do you recognize Exhibit B as a</p>	<p>1 normal practice. 2 BY MR. KINNEY: 3 Q. In any event, is that certification 4 correct or not, correct? 5 A. It is not correct for us -- 6 Q. So it's not correct? 7 A. -- or I mean, no, it wouldn't be. It 8 depends when this was -- when this was -- 9 Q. When was this signed? 10 A. I don't know. It wasn't dated. 11 Q. Has this been a true certification at any 12 time since the year 2000? 13 A. I don't know. We'd have to validate it. 14 Q. At any time since 1997 has Michael Foods 15 produced more than 35, 40 percent of its total 16 egg needs? 17 A. I would have to suggest that probably 18 '97. Prior to '97, we would have met that 19 criteria. I'm not sure after '97. 20 Q. All right. So -- but I asked for the 21 period 2000 -- 2000 through 2008 -- actually, 22 2000 through 2012, hasn't the split been about 23 30 -- 30 percent you produced with 24 company-owned hens and you bought the other 25 65, 70 percent on the outside?</p>

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<p>1 A. That's what it's been in more recent 2 years. I just don't recall, I guess, the 3 exact percentages going back to the early part 4 of the 2000s. 5 Q. But does that sound generally correct? 6 A. That's -- I would agree. That 7 probably -- I know in recent years that would 8 be the case. 9 Q. Did you ever ask anyone whether Michael 10 Foods qualified as a farmer under 11 Capper-Volstead when it buys 65 to 70 percent 12 of its egg requirements? 13 A. Yes, we did. 14 Q. Who did you ask? 15 A. We asked UEP counsel. 16 Q. When did you do that? 17 A. Oh, in the last -- probably in the 18 last -- it's come up over the last few years 19 since we've had Randon Wilson. And upon their 20 review, we've -- 21 MR. DAVIS: This is Evan Davis. I 22 object to the extent the question did not ask 23 for any advice that was given by UEP counsel 24 and I would object to any such line of 25 questioning.</p>	<p>1 BY MR. KINNEY: 2 Q. Mr. Baker -- 3 MR. NEUWIRTH: Hold on. These are 4 objections that are coming in the middle of 5 answers, not questions. That's not permitted. 6 This has to stop. You cannot object in the 7 middle of an answer. You can only object to a 8 question. 9 MR. DAVIS: Wait. Mr. Neuwirth, 10 you're not the questioner. And when the 11 answer goes off from what the question was, 12 the question itself as phrased was not 13 objectionable, the answer starts to reveal 14 privileged advice that's not responsive to the 15 question, I have a duty to protect the 16 privileged advice that was given by counsel 17 for my client. 18 MR. NEUWIRTH: And I just want to 19 note for the record, which I am allowed to do, 20 that this practice of interrupting answers and 21 interposing objections to an answer is not 22 permitted and we would seek intervention of 23 the Court if it continues. 24 MR. DAVIS: I disagree with your 25 characterization of what I was doing.</p>
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<p>1 BY MR. KINNEY: 2 Q. So who made this request to UEP? 3 A. I did. 4 Q. And -- 5 A. At a meeting we talked about it. 6 Q. This is an oral request that you made to 7 Mr. Wilson? 8 A. Yes. 9 Q. And how did he respond, in writing or 10 orally? 11 A. Just orally. 12 Q. Did you discuss the answer that you got 13 from Mr. Wilson with anybody else? 14 A. I don't recall. 15 Q. Did you discuss it with anybody else at 16 Michael Foods? Did you go back and say good 17 news, bad news, no news? 18 A. It was -- nothing changed. So there was 19 no reason to -- I don't know. We were told we 20 were -- 21 MR. DAVIS: Hold on. I object to 22 the extent the question again did not ask for 23 any advice that was -- 24 (Tone.) 25 MR. DAVIS: -- by UEP counsel.</p>	<p>1 MR. GREENE: If I could request, 2 Mr. Davis, could you -- if it's acceptable to 3 counsel, would you articulate your position on 4 where you're asserting privilege, what in your 5 view the witness can or cannot testify about. 6 I think that may help the witness then in 7 understanding how to avoid some of the issues. 8 MR. DAVIS: Well, quite simply, the 9 UEP maintains a privilege over advice that was 10 given by its counsel to its members, including 11 Mr. Baker. And I don't believe that the 12 questions that Mr. Kinney has posed 13 specifically asked the witness to reveal or 14 divulge any of that advice and therefore the 15 questions themselves as posed were not 16 objectionable. But I would ask that the 17 witness listen to those questions and provide 18 answers responsive to those questions that do 19 not reveal privileged advice given to him or 20 Michael Foods by counsel for UEP. 21 MR. GREENE: Do you understand? 22 THE WITNESS: Yes. 23 MR. GREENE: Okay. 24 BY MR. KINNEY: 25 Q. Okay. With that fun interpretation, what</p>

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<p>1 was it that prompted you to ask Mr. Wilson 2 about whether -- about Michael Foods' status 3 under Capper-Volstead? 4 A. Just as a matter of reference just to 5 reiterate or to reconfirm our standing. 6 Q. Well, was there something that happened 7 that caused you to have this question in your 8 mind? There must've been something that 9 precipitated it. 10 A. Well, I think -- 11 MR. GREENE: Wait a minute. 12 Objection, compound and argumentative. 13 BY MR. KINNEY: 14 Q. Please answer. 15 A. I don't recall the exact episode or the 16 question that triggered it or somebody just 17 asked, because there has -- there's been 18 discussion from time to time about some of the 19 status and if it changed or whatever. So I 20 think that's why we had asked the question or 21 posed the question at one point. 22 Q. And do I understand it's your testimony 23 that -- notwithstanding raising this question 24 and getting a response from Mr. Wilson, that 25 you didn't discuss this with anybody else at</p>	<p>1 Q. To whom did that committee report? 2 A. I'm sorry? 3 Q. To whom did that committee report? 4 A. They reported back to the board of 5 directors. 6 Q. Who asked you to be on the Long Range 7 Planning Committee? 8 A. The chairman makes the appointments, the 9 UEP chairman. I believe it -- I think it was 10 Roger Deffner was the chair at that point or 11 one of the chairs. I'm not sure. But it's 12 the UEP chairman. 13 Q. Did Mr. Deffner tell you why he wanted 14 you to serve on the committee? 15 A. Not specifically, no. 16 Q. Did he explain to you why you would be a 17 valuable member of the committee? 18 A. Yeah, mainly because of the strategic 19 outlook or the ability to talk about 20 strategics since we're, you know, one of the 21 larger marketers in the industry. So -- and 22 producers. So that was my understanding. 23 (Exhibit T marked for 24 identification.) 25 BY MR. KINNEY:</p>
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<p>1 Michael Foods? 2 A. I don't recall who I would've talked to 3 about it. 4 Q. Did you ever talk to Tim Bebee about it? 5 A. Most -- I don't know. I don't remember. 6 Q. Did you ever talk to Toby Catherman about 7 it? 8 A. I don't remember. 9 Q. Other than this -- can you place the time 10 frame of this meeting where you raised the 11 question about Capper-Volstead with 12 Mr. Wilson? 13 A. No. I really can't. It was -- it was 14 after he was named general counsel. I don't 15 recall the exact period. I don't recall. 16 Q. Other than this one discussion with 17 Mr. Wilson, have you had any other discussions 18 with him or anybody else at UEP regarding 19 whether Michael Foods qualifies as an egg 20 producer under Capper-Volstead? 21 A. No, not to my recollection. 22 Q. I think based on your testimony this 23 morning you said that you were a member of the 24 Long Range Planning Committee? 25 A. Yes.</p>	<p>1 Q. I'm showing you what we've marked as 2 Exhibit T, which is a document has the caption 3 Long Range Planning Committee, August 6 and 7, 4 2007 in Salt Lake City. It's coded MF10615228 5 through 5230. My first question is: Is it 6 correct that you attended this Long Range 7 Planning Committee meeting on August 6th and 8 7th, 2007 in Salt Lake City as reflected in 9 Exhibit T, which is the meeting schedule and 10 agenda? 11 A. (Reviews document.) Yes, I did. 12 Q. And is it also correct that one of the 13 agenda topics for that meeting was number 3, 14 review of Capper-Volstead, A, compliance rules 15 and current membership, B, strengthening and 16 enhancing for better utilization by Mr. Kevin 17 Haley? 18 A. Yes, I recall. 19 Q. All right. And at the time was Kevin 20 Haley UEP's counsel? 21 A. At this point he was, yes. 22 Q. And he is no longer? 23 A. He is no longer. 24 Q. Does Brann and Isaacson provide any legal 25 services to UEP today that you're aware of?</p>

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<p>1 A. Not that I'm aware of.</p> <p>2 Q. So that's all been taken over by Randon</p> <p>3 Wilson?</p> <p>4 A. Yes, that's my understanding.</p> <p>5 Q. Before the committee got together in</p> <p>6 Salt Lake City in August 2007, did Kevin Haley</p> <p>7 provide the committee members with any</p> <p>8 materials regarding Capper-Volstead?</p> <p>9 A. I don't recall. You know, there may have</p> <p>10 been a document. I don't remember, though. I</p> <p>11 didn't -- I don't recall for sure.</p> <p>12 (Exhibit TT marked for</p> <p>13 identification.)</p> <p>14 BY MR. KINNEY:</p> <p>15 Q. Let me also show you what's been marked</p> <p>16 as Exhibit TT, which is the minutes for the</p> <p>17 UEP Long Range Planning Committee meeting,</p> <p>18 August 7, 2007, Salt Lake City. It's coded</p> <p>19 MF10617085 and 7086. And we'll be dealing</p> <p>20 with -- I'll direct your attention. It starts</p> <p>21 at the top of the second page of the exhibit.</p> <p>22 There's a heading: Review UEP's</p> <p>23 Capper-Volstead.</p> <p>24 Do you see that?</p> <p>25 A. (Reviews document.) Yes.</p>	<p>1 that statement by Mr. Haley at the meeting?</p> <p>2 MR. GREENE: Okay. Mr. Davis, were</p> <p>3 you going to say anything or not?</p> <p>4 MR. DAVIS: No, not to that</p> <p>5 question.</p> <p>6 THE WITNESS: Well, after all, I</p> <p>7 come back to the question. The question was:</p> <p>8 Was there any --</p> <p>9 BY MR. KINNEY:</p> <p>10 Q. Was there any discussion about that</p> <p>11 statement?</p> <p>12 A. Yeah, there was some discussion. And I</p> <p>13 don't remember all the specifics of the</p> <p>14 discussion. But I know there was discussion</p> <p>15 about this.</p> <p>16 Q. Did you say or do anything when you heard</p> <p>17 that statement by Mr. Haley?</p> <p>18 A. Yes -- I mean, I think there was some</p> <p>19 discussion at that point, but -- I don't know.</p> <p>20 I think there -- if I recall -- I don't</p> <p>21 recall. I don't know specifically where we</p> <p>22 left it.</p> <p>23 Q. Well, when you heard Mr. Haley make the</p> <p>24 statement that if a company markets or sells</p> <p>25 more than twice as many eggs as it produces,</p>
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<p>1 Q. And that first paragraph at the top of</p> <p>2 the second page, the last sentence states:</p> <p>3 Haley said if a company markets or sells more</p> <p>4 than twice as many eggs as they produce, then</p> <p>5 this company would be questionable for</p> <p>6 membership under Capper-Volstead.</p> <p>7 Was there any discussion regarding that</p> <p>8 statement by Mr. Haley at the meeting?</p> <p>9 MR. DAVIS: I --</p> <p>10 MR. GREENE: Mr. Davis, you were</p> <p>11 saying something?</p> <p>12 MR. DAVIS: I'm sorry. Could you</p> <p>13 just read back the question?</p> <p>14 THE COURT REPORTER: One moment.</p> <p>15 "And that first paragraph at the</p> <p>16 top of the second page, the last sentence</p> <p>17 states: Haley said if a company markets or</p> <p>18 sells more than twice as many eggs as they</p> <p>19 produce, then this company would be</p> <p>20 questionable for membership under</p> <p>21 Capper-Volstead."</p> <p>22 MR. BARNES: Objection. That's not</p> <p>23 what it says.</p> <p>24 THE COURT REPORTER: Then question</p> <p>25 then is: Was there any discussion regarding</p>	<p>1 then this company would be questionable for</p> <p>2 membership, did that strike any -- did that</p> <p>3 remind you of Michael Foods per chance?</p> <p>4 A. Yes, it was running -- it entered my</p> <p>5 mind, yes.</p> <p>6 Q. And -- and doesn't that sound exactly</p> <p>7 like Michael Foods, a company that</p> <p>8 produces -- that sells more than twice as many</p> <p>9 eggs as it produces?</p> <p>10 A. Yeah. And in that discussion I think</p> <p>11 there was the thought -- I don't think anybody</p> <p>12 knew the members numbers for sure for any of</p> <p>13 the members. But there may be -- there</p> <p>14 might've been other people that were -- you</p> <p>15 know, were in that category maybe where there</p> <p>16 was a question, but it was a question that was</p> <p>17 to be researched or -- or you know, looked</p> <p>18 into.</p> <p>19 Q. Did you ever get an answer other than the</p> <p>20 one -- the discussion that you had with</p> <p>21 Mr. Wilson, did you get any further</p> <p>22 information on that point from Mr. Haley or</p> <p>23 anybody else?</p> <p>24 A. I --</p> <p>25 MR. DAVIS: I object to that</p>

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<p>1 question. That was calling for legal advice</p> <p>2 beyond the scope of what's referenced in the</p> <p>3 document.</p> <p>4 MR. GREENE: Mr. Davis, are you</p> <p>5 objecting to a yes-or-no answer?</p> <p>6 MR. DAVIS: I would not object to a</p> <p>7 yes-or-no answer.</p> <p>8 MR. GREENE: Okay.</p> <p>9 THE WITNESS: So the question --</p> <p>10 BY MR. KINNEY:</p> <p>11 Q. The question is: Did you get any further</p> <p>12 information on that topic from anybody?</p> <p>13 A. Not that I recall at this point, not at</p> <p>14 that time.</p> <p>15 (Exhibit U marked for</p> <p>16 identification.)</p> <p>17 BY MR. KINNEY:</p> <p>18 Q. I'm going to show you what has been</p> <p>19 marked as Exhibit U, which is various</p> <p>20 materials for the Long Range Planning</p> <p>21 Committee, August 6th and 7th, 2007, with the</p> <p>22 note "Chad's Copy." It's coded UE0148221</p> <p>23 through 0148285. And direct your attention in</p> <p>24 Exhibit U to the page that is coded 226. It</p> <p>25 ends with 226.</p>	<p>1 that the question does not exclude further</p> <p>2 communications between the witness and</p> <p>3 Mr. Haley.</p> <p>4 MR. GREENE: In its current --</p> <p>5 MR. KINNEY: I object to the</p> <p>6 objection. I asked him: Did you say or do</p> <p>7 anything in response to Mr. Haley's</p> <p>8 statements? Enough's enough. Let him answer</p> <p>9 the question.</p> <p>10 MR. DAVIS: Okay. So let me make a</p> <p>11 record of this. I'm trying to not interrupt</p> <p>12 the witness' answer. And I'm making it very</p> <p>13 clear that UEP objects to that question</p> <p>14 insofar it does not exclude an answer that</p> <p>15 would include legal advice given to the</p> <p>16 witness or communications between the witness</p> <p>17 and Mr. Haley.</p> <p>18 MR. KINNEY: I'm asking the witness</p> <p>19 what he did or said. I didn't ask him</p> <p>20 anything about what Mr. Haley said.</p> <p>21 MR. DAVIS: The witness --</p> <p>22 MR. KINNEY: So your objection is</p> <p>23 not well taken. It's obstructionist. It's</p> <p>24 interfering with us and it's wasting time.</p> <p>25 MR. DAVIS: The witness'</p>
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<p>1 Do you have that before you?</p> <p>2 A. (Reviews document.) Yes, I do.</p> <p>3 Q. All right. And I'll do my best to try</p> <p>4 and read this. And then if you have any</p> <p>5 corrections, you let me know. But these notes</p> <p>6 of Chad Gregory from the meeting state: Item</p> <p>7 number 4, Review of UEP's Capper-Volstead</p> <p>8 status. Any issues with current members?</p> <p>9 50 percent rule, if selling more of something</p> <p>10 that has nothing to do with egg production,</p> <p>11 paren, I believe it's Pilgrim's, close paren,</p> <p>12 then no big deal or doesn't apply. If selling</p> <p>13 more eggs, in parenthesis, egg products, close</p> <p>14 parenthesis, than producing, then ineligible</p> <p>15 to be member of UEP unless they rearrange or</p> <p>16 define their production and processing are</p> <p>17 separate then the production</p> <p>18 company/area/division could be.</p> <p>19 Have I read that correctly?</p> <p>20 A. That's how I would read it, I guess.</p> <p>21 Q. All right. Did you say or do anything in</p> <p>22 response to Haley's statements regarding the</p> <p>23 50 percent rule at the planning committee</p> <p>24 meeting?</p> <p>25 MR. DAVIS: I object to the extent</p>	<p>1 communications with Mr. Haley --</p> <p>2 MR. KINNEY: I didn't ask for his</p> <p>3 communications. I asked what he said or did.</p> <p>4 MR. DAVIS: Okay. What the witness</p> <p>5 said or did insofar as --</p> <p>6 MR. KINNEY: That is not subject to</p> <p>7 your privilege. It's not subject to any</p> <p>8 privilege claim, any bona fide privilege claim</p> <p>9 by UEP. You're just making objections to make</p> <p>10 this more difficult than it already is. Now,</p> <p>11 when you get to the point that you have a</p> <p>12 proper objection, make it. Otherwise please</p> <p>13 be quiet.</p> <p>14 BY MR. KINNEY:</p> <p>15 Q. Do you have the question in mind?</p> <p>16 MR. GREENE: Well, he couldn't --</p> <p>17 nobody could have the question in mind.</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. Did you say or do anything in response to</p> <p>20 that statement by Mr. Haley? That's the</p> <p>21 question.</p> <p>22 MR. DAVIS: And I renew my</p> <p>23 objection.</p> <p>24 MR. GREENE: And Mr. Baker, it's a</p> <p>25 yes-or-no question. So you can answer it yes</p>

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<p>1 or no.</p> <p>2 THE WITNESS: Did I say anything to</p> <p>3 Mr. --</p> <p>4 BY MR. KINNEY:</p> <p>5 Q. Did you say or do anything at the meeting</p> <p>6 in response to that statement by Mr. Haley?</p> <p>7 A. I honestly don't remember.</p> <p>8 Q. Is there anything that would refresh your</p> <p>9 recollection on whether you did or said</p> <p>10 anything in response to that statement?</p> <p>11 A. I don't know. My recollection was that</p> <p>12 this was an issue for counsel and -- I mean,</p> <p>13 being -- we were one of the companies maybe</p> <p>14 that had the question. It was like, you know,</p> <p>15 it wasn't -- I didn't feel it was our place.</p> <p>16 They just needed to sort this out. I think I</p> <p>17 stayed out of it is my recollection.</p> <p>18 Q. When you went to meetings like the Long</p> <p>19 Range Planning Committee meeting, did you</p> <p>20 typically take notes?</p> <p>21 A. No, I'm a terrible note-taker. So no, I</p> <p>22 did not.</p> <p>23 Q. Okay. Do you know whether other people</p> <p>24 that were at the meeting were taking notes?</p> <p>25 A. Don't -- can't speak to that, don't know.</p>	<p>1 Gregory's notes, and I said that I thought I</p> <p>2 had it right, was the reference to Pilgrim's</p> <p>3 and that being Pilgrim's Pride?</p> <p>4 A. You know, I don't remember. I saw the</p> <p>5 Pilgrim's too. I don't know. I don't -- that</p> <p>6 doesn't connect any dots for me either.</p> <p>7 Q. How long did the discussion at the</p> <p>8 planning committee meeting regarding</p> <p>9 Capper-Volstead last?</p> <p>10 A. Oh, I can't -- I can't speak to that. I</p> <p>11 don't recall.</p> <p>12 Q. Well, the minutes say that it was a</p> <p>13 six-hour meeting. It started at shortly</p> <p>14 before 8:00 a.m. and finished at 2:00 p.m. So</p> <p>15 was it an hour, two hours, ten minutes?</p> <p>16 A. It could have been all of the above. I</p> <p>17 don't know. I don't think it was the primary</p> <p>18 focus on the meeting personally. But that's</p> <p>19 my recollection.</p> <p>20 Q. And do you still have Exhibit U in front</p> <p>21 of you? If you could turn to the page -- the</p> <p>22 next page. We were on 226. If you could turn</p> <p>23 to 227.</p> <p>24 Do you have that, 227?</p> <p>25 A. Yes.</p>
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<p>1 Q. Do you know whether -- apart from whether</p> <p>2 you did or said anything in response to</p> <p>3 Mr. Haley's statement, did anybody else say or</p> <p>4 do anything in response to Mr. Haley's</p> <p>5 statement?</p> <p>6 MR. DAVIS: I restate my earlier</p> <p>7 objection.</p> <p>8 MR. GREENE: And to avoid further</p> <p>9 problems, understand that's a yes-or-no</p> <p>10 question. You can answer it yes or no.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. KINNEY:</p> <p>13 Q. And who said anything in response to</p> <p>14 Mr. Haley's statement?</p> <p>15 A. My recollection is is that Mr. Gregory,</p> <p>16 Gene Gregory suggested they would -- this</p> <p>17 issue would have to be further discussion or</p> <p>18 tabled for further review, something to that</p> <p>19 effect. That's all I can recall.</p> <p>20 Q. And consistent with your prior testimony,</p> <p>21 you're -- you did not receive any subsequent</p> <p>22 information from Mr. Haley or Mr. Gregory on</p> <p>23 this topic?</p> <p>24 A. I don't believe so.</p> <p>25 Q. In the notes that I read you, Chad</p>	<p>1 Q. All right. And at the top the second</p> <p>2 item of Mr. Gregory's notes -- and again, I'll</p> <p>3 do my best to decipher this. And if you have</p> <p>4 any corrections, let us know. "The LRPC</p> <p>5 considers..." And I think there was the word</p> <p>6 "whether," which has been scratched out.</p> <p>7 "...recommending UEP stays as Capper-Volstead</p> <p>8 or becomes a true trade association."</p> <p>9 Have I read that correctly?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. And what does that statement refer to?</p> <p>12 MR. DAVIS: Objection, calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: There was some</p> <p>15 discussion on whether we needed to stay</p> <p>16 Capper-Volstead at that point or be a trade</p> <p>17 association. It was just a real high-level</p> <p>18 discussion. It didn't -- I don't think it</p> <p>19 took -- lasted very long. But it was -- the</p> <p>20 idea was thrown on the table, let's say.</p> <p>21 BY MR. KINNEY:</p> <p>22 Q. What's the difference -- what's your</p> <p>23 understanding of the difference between UEP as</p> <p>24 a trade association and UEP as a cooperative?</p> <p>25 A. The trade association would -- would</p>

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<p>1 eliminate any kind of discussion on marketing, 2 supply, those kinds of issues, and would focus 3 strictly on informational, regulatory, still 4 allow lobbying, I think. But that was my 5 understanding for the ten-second version of 6 this. 7 Q. And if you could look at Exhibit TT. 8 It's one of the ones that's before you. It's 9 the minutes of the meeting. 10 A. Okay. 11 Q. All right. And there's a discussion -- 12 there's a reference to a discussion about 13 Mr. Haley's conducting a survey of the UEP 14 members regarding Capper-Volstead. Do you 15 recall that discussion at the committee 16 meeting in Salt Lake City? 17 A. Vaguely. 18 Q. And was it your understanding that that 19 was going to be a survey that would come from 20 Mr. Haley with the results to be returned to 21 Mr. Haley? 22 A. Yes, I think that was the case. 23 Q. And why was it done that way? 24 MR. GREENE: Objection, calls for 25 speculation.</p>	<p>1 tabled? 2 MR. GREENE: Objection, calls for 3 speculation. 4 THE WITNESS: I don't recall that 5 was a discussion. I don't have an answer, 6 don't recall. 7 BY MR. KINNEY: 8 Q. All right. And then in the minutes, 9 Exhibit TT, there's -- again, on the second 10 page, the one coded 086, if you have that, 11 this is exhibit -- 12 A. Page 2, yes. 13 Q. Page 2? 14 A. Yes. 15 Q. Thank you. And in -- the third full 16 paragraph states that after a considerable 17 amount of discussion, it was decided that 18 Haley would review past price discovery and 19 marketing committee minutes and see if any 20 activity was taken that might be questionable 21 and goes on to describe other things that 22 Haley would review regarding Capper-Volstead. 23 And my question is: Did you understand 24 that Kevin Haley was supposed to do this 25 review based on the discussions at the meeting</p>
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<p>1 THE WITNESS: I don't recall. 2 BY MR. KINNEY: 3 Q. And in Exhibit U, the Chad Gregory 4 materials, if we go -- starting at the page 5 that starts 276 through the end of the 6 document, is that the survey, the 7 Capper-Volstead survey? 8 A. (Reviews document.) Yes. It must be the 9 form that I was not familiar with earlier, I 10 think, that was similar to the other exhibit 11 you provided. 12 Q. And who prepared the survey? 13 A. I do not know. 14 Q. Did you get the survey for the first time 15 when you went to the meeting in Salt Lake 16 City? 17 A. We must have. I don't remember for sure. 18 But we must have. 19 Q. Well, do you know whether it was sent to 20 you before you went to the meeting? 21 A. I don't recall. 22 Q. And the meeting minutes, again jumping to 23 Exhibit TT, the minutes, they say that the -- 24 state that the survey idea was tabled. Why 25 was the survey -- the Capper-Volstead survey</p>	<p>1 in Salt Lake City? 2 A. No. My understanding is it was Kevin 3 Haley and staff. 4 Q. Okay. But they were supposed to do this 5 review, correct? 6 A. Yes. 7 Q. And did you get a -- did Mr. Haley or 8 anyone else, staff members at UEP, provide a 9 follow up report on the results of Haley's 10 review? 11 A. I don't know. 12 Q. Did you ask for one? 13 A. No, I did not. 14 Q. And I think you said that there were two 15 meetings of the Long Range Planning Committee 16 meeting. And I think that there was one in 17 February 2007, this one in August 2007. And 18 then you said there was no more meetings? 19 A. I don't recall -- I don't remember any 20 more meetings after this one. That's why I 21 was thinking there was two. And I don't -- 22 and that's why I don't think we ever had a 23 follow-up and -- on this Long Range Planning 24 Committee. So that was the last meeting or 25 conversation on that subject --</p>

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<p>1 Q. Did --</p> <p>2 A. -- that I remember.</p> <p>3 Q. Did anyone ever explain to you why</p> <p>4 the -- why the planning committee went silent?</p> <p>5 A. No, not that I'm -- not that I can</p> <p>6 recall.</p> <p>7 Q. When you went back to Michael Foods after</p> <p>8 you'd attended the August 2007 UEP meeting in</p> <p>9 Salt Lake City, did you provide an update on</p> <p>10 anybody -- an update to anybody regarding</p> <p>11 Capper-Volstead?</p> <p>12 A. I don't remember. I don't recall if I</p> <p>13 did or not. I don't remember if I did an</p> <p>14 email update or it might've been a verbal</p> <p>15 update. I just -- I'm not sure I can remember</p> <p>16 that.</p> <p>17 Q. Have you ever discussed with anyone</p> <p>18 whether Michael Foods might not qualify as an</p> <p>19 egg farmer or producer under Capper-Volstead?</p> <p>20 MR. DAVIS: To clarify, this is</p> <p>21 asking for a yes or no?</p> <p>22 MR. KINNEY: Yes.</p> <p>23 THE WITNESS: Okay. Yes.</p> <p>24 BY MR. KINNEY:</p> <p>25 Q. And previously you described this oral</p>	<p>1 meeting, in the second paragraph at the end it</p> <p>2 states: Haley said that supply management</p> <p>3 recommendations written up in UEP newsletters</p> <p>4 is also questionable.</p> <p>5 Did the planning committee do anything in</p> <p>6 response to that statement by Mr. Haley?</p> <p>7 MR. GREENE: I'm sorry. Could you</p> <p>8 just direct me to where you're reading?</p> <p>9 MR. KINNEY: Sure. It's -- I'm</p> <p>10 sorry. It's the second full paragraph on the</p> <p>11 second page, final sentence. Do you see that?</p> <p>12 "Haley said that supply management</p> <p>13 recommendations written up in UEP newsletters</p> <p>14 is also questionable."</p> <p>15 MR. GREENE: Thank you, John.</p> <p>16 MR. KINNEY: Sure.</p> <p>17 THE WITNESS: And again --</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. So the question was: Did the</p> <p>20 committee -- did any of the committee members</p> <p>21 do anything in response to that statement by</p> <p>22 Mr. Haley?</p> <p>23 A. No, not that I'm aware of.</p> <p>24 Q. Did the committee, for example, recommend</p> <p>25 to the UEP board or UEP staff that United</p>
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<p>1 discussion that you had with Randon Wilson.</p> <p>2 That's one, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Any other conversations that you've had</p> <p>5 with anybody else on that topic?</p> <p>6 A. No. I think if I did, they were internal</p> <p>7 between Mr. Bebee, Mr. Catherman, myself.</p> <p>8 Q. Well, can you generally -- do you recall</p> <p>9 having those kinds of discussions with</p> <p>10 Mr. Catherman or Mr. Bebee?</p> <p>11 A. Not specifically, can't tell you a date</p> <p>12 or time. But I know I had one. I just don't</p> <p>13 know the date or when.</p> <p>14 Q. So from time to time you've had</p> <p>15 discussions with Mr. Bebee or Mr. Catherman</p> <p>16 regarding whether Michael Foods qualifies?</p> <p>17 A. Yes.</p> <p>18 Q. And what was the consensus that the three</p> <p>19 of you reached, if any?</p> <p>20 A. It's something that we can't -- we don't</p> <p>21 know. We don't know the answer. We were just</p> <p>22 waiting for somebody to tell us what the</p> <p>23 answer was, more or less.</p> <p>24 Q. In the minutes, Exhibit TT, again from</p> <p>25 the August 7th, 2007 planning committee</p>	<p>1 Voices should no longer include supply</p> <p>2 management recommendations?</p> <p>3 A. Not that I recall.</p> <p>4 Q. In Exhibit U, the Chad package. And if</p> <p>5 you go to the page that's coded 230 -- do you</p> <p>6 have that? It's the United Egg Producers</p> <p>7 membership agreement.</p> <p>8 A. Yes.</p> <p>9 Q. All right. And is that the -- that's</p> <p>10 this -- the same membership agreement that you</p> <p>11 signed for Michael Foods, correct?</p> <p>12 A. (Reviews document.) It appears to be</p> <p>13 that, yes.</p> <p>14 Q. Next to the certification, the one that</p> <p>15 we discussed previously, there is a</p> <p>16 handwritten notation: All current members</p> <p>17 have signed this.</p> <p>18 Was there any discussion at the</p> <p>19 Salt Lake City meeting regarding this UEP</p> <p>20 certification?</p> <p>21 A. Not that I recall. I don't recall --</p> <p>22 see, I don't know when this (indicating) form</p> <p>23 was done relative to those planning -- if this</p> <p>24 was before or after. I don't know. But there</p> <p>25 was no discussion that I remember about this</p>

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<p>1 specifically.</p> <p>2 MR. KINNEY: All right. We need to</p> <p>3 let the videographer change the tape.</p> <p>4 THE VIDEOGRAPHER: We are going off</p> <p>5 the record.</p> <p>6 The time is 3:00 p.m.</p> <p>7 (Recess.)</p> <p>8 THE VIDEOGRAPHER: We are back on</p> <p>9 the record. This marks the beginning of</p> <p>10 videotape number 4 in the deposition of Terry</p> <p>11 Baker.</p> <p>12 The time is 3:16 p.m.</p> <p>13 BY MR. KINNEY:</p> <p>14 Q. Mr. Baker, did anyone tell you that there</p> <p>15 were open issues under Capper-Volstead</p> <p>16 regarding the protections afforded to</p> <p>17 integrated companies like Michael Foods?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did anyone tell you that there were open</p> <p>20 issues under Capper-Volstead regarding</p> <p>21 agreements to limit output or supply?</p> <p>22 A. I'm sorry. Say that again.</p> <p>23 Q. Sure. Did anyone tell you that there</p> <p>24 were open issues under Capper-Volstead</p> <p>25 regarding agreements to limit output or</p>	<p>1 exhibit is being marked, can I please make an</p> <p>2 objection on behalf of the direct purchaser</p> <p>3 plaintiffs that the witness does not appear to</p> <p>4 have taken any appropriate steps as a</p> <p>5 corporate representative on Capper-Volstead</p> <p>6 and we object to the designation and reserve</p> <p>7 the right as we did with the topics this</p> <p>8 morning to request that Michael Foods produce</p> <p>9 a properly prepared witness on the</p> <p>10 Capper-Volstead topic and also the other</p> <p>11 topics where we noted this morning that the</p> <p>12 witness did not seem prepared.</p> <p>13 MR. RAYLE: The indirect plaintiffs</p> <p>14 join in that objection.</p> <p>15 MR. KINNEY: As do the direct</p> <p>16 action plaintiffs.</p> <p>17 MR. GREENE: We disagree, but the</p> <p>18 objection is noted.</p> <p>19 MR. KINNEY: And for the record,</p> <p>20 Exhibit V is a November 16th, 2004 memo from</p> <p>21 Brann and Isaacson. It also includes a</p> <p>22 February 5, 1992 memo from Brann and Isaacson</p> <p>23 regarding antitrust issues. It's coded</p> <p>24 UE0944686 through 694.</p> <p>25 MR. BARNES: Counsel, for the</p>
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<p>1 supply?</p> <p>2 A. No, not that I'm aware of.</p> <p>3 Q. Did you do anything to prepare today to</p> <p>4 testify as Michael Foods' 30(b)(6)</p> <p>5 representative regarding Capper-Volstead?</p> <p>6 A. No, nothing specifically.</p> <p>7 Q. Did you do anything to determine what</p> <p>8 different or additional information others at</p> <p>9 Michael Foods might have regarding</p> <p>10 Capper-Volstead other than what you know</p> <p>11 personally?</p> <p>12 A. No, I did not.</p> <p>13 Q. Did you talk with anyone at Michael Foods</p> <p>14 to determine whether they had additional or</p> <p>15 other information about Capper-Volstead?</p> <p>16 A. No.</p> <p>17 Q. Did you review any documents or other</p> <p>18 materials regarding Capper-Volstead?</p> <p>19 A. No.</p> <p>20 (Exhibit V marked for</p> <p>21 identification.)</p> <p>22 BY MR. KINNEY:</p> <p>23 Q. Let me show you what's been marked as</p> <p>24 Exhibit V as in Victor.</p> <p>25 MR. NEUWIRTH: While this</p>	<p>1 benefit of the UEP lawyer on the phone,</p> <p>2 there's also a boldface caption on the top</p> <p>3 that says attorney-client privileged</p> <p>4 communications.</p> <p>5 MR. DAVIS: Thank you. We're not</p> <p>6 claiming a privilege over this particular</p> <p>7 document.</p> <p>8 BY MR. KINNEY:</p> <p>9 Q. Mr. Baker, did you ever see these Brann</p> <p>10 and Isaacson 1992 and 2004 antitrust memos?</p> <p>11 A. (Reviews document.) I did not.</p> <p>12 Q. Do you know whether anyone else at</p> <p>13 Michael Foods ever received or saw these</p> <p>14 antitrust memos that are in Exhibit V?</p> <p>15 A. Do not.</p> <p>16 Q. Did you receive or see memos from Brann</p> <p>17 and Isaacson regarding UEP-related antitrust</p> <p>18 issues other than the two memos that are</p> <p>19 included in Exhibit V?</p> <p>20 MR. DAVIS: Again, you're asking</p> <p>21 for a yes-or-no answer?</p> <p>22 MR. KINNEY: Yes.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. KINNEY:</p> <p>25 Q. As far as you know, during the time frame</p>

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<p>1 that Brann and Isaacson was doing legal work 2 for UEP, did it ever represent Michael Foods? 3 A. Not that I'm aware. 4 Q. Has Brann and Isaacson ever represented 5 you personally? 6 A. No. 7 Q. Have you received memos from anyone other 8 than Brann and Isaacson regarding UEP-related 9 antitrust issues? 10 A. No -- wait a minute. Let me rephrase. 11 If we did get something, it would've been from 12 Haley. 13 Q. All right. 14 A. And I don't recall if we got something 15 that was different or that was included in 16 that minutes or the deck. I'm a little foggy 17 on that and I don't remember. But there may 18 have been something there. But that would've 19 been the only thing. 20 Q. All right. Did you receive training at 21 Michael Foods regarding the antitrust laws? 22 A. Like I said, I'm not clear what the -- 23 when you say "training," that's fairly broad 24 or vague. I'm not sure. 25 Q. Well, some companies have an antitrust</p>	<p>1 Q. And have you done that for 2013? 2 A. Yes. I think so, pretty sure it was 3 earlier this year, yes. I believe I did do it 4 earlier in '13. 5 Q. Okay. And directing your attention 6 within Exhibit W to -- it's toward the end, 7 the pages that start at 757. There's a 8 section, Antitrust Compliance. 9 Do you have that before you? 10 A. (Reviews document.) Yes. 11 Q. All right. And have -- just now that you 12 have that before you, have you attended any 13 presentations at Michael Foods regarding 14 antitrust compliance? 15 A. No, not that I'm aware of. Other than 16 reviewing this material, I don't recall any 17 presentations on it. 18 Q. All right. And the antitrust compliance 19 section of the business conduct policy at the 20 top of the page that's coded 758 states: If 21 you engage in any conduct or practice that may 22 involve the antitrust laws, you should be 23 guided by this policy and you should seek 24 advice of company legal counsel. 25 Did you ever seek advice of company</p>
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<p>1 compliance program, things like that. Have 2 you ever gone to an antitrust compliance 3 program at Michael Foods? 4 A. No, I have not. 5 (Exhibit W marked for 6 identification.) 7 BY MR. KINNEY: 8 Q. Well, let me show you what's been marked 9 as Exhibit W, which is the business conduct 10 policy, Michael Foods Inc. And it's coded 11 MF10053741 through 763. 12 Are you familiar with that document? 13 A. (Reviews document.) Yes. 14 Q. And did you receive a copy of this in the 15 course of your employment at Michael Foods? 16 A. Yes. 17 Q. Have you attended presentations regarding 18 the business conduct policy for the company? 19 A. No. 20 Q. Who gave you the document? 21 A. It's an annual -- I think it's an annual 22 process we go through that you're required to 23 read off and then have a signature 24 confirmation that you have reviewed the 25 materials.</p>	<p>1 counsel in connection with any contacts with 2 UEP? 3 MR. GREENE: It's a yes-or-no 4 question. You can answer as such. 5 THE WITNESS: No. 6 BY MR. KINNEY: 7 Q. Did you ever seek advice of counsel for 8 Michael Foods on any question regarding 9 Capper-Volstead? 10 A. No. 11 Q. In your stack there -- sorry to make you 12 go back. But Exhibit TT, which were the 13 minutes from the Long Range Planning Committee 14 meeting. Do you have those, the actual 15 minutes? 16 A. Oh, yes. 17 Q. Okay. The minutes on the first page of 18 Exhibit TT state that Mr. Deffner introduced 19 Randon Wilson, attorney with Jones Waldo law 20 firm, to discuss Capper-Volstead farmer 21 cooperatives and the organization of the 22 United Potato Growers Association. 23 Is this the same Randon Wilson that 24 you've referred to who is now general counsel 25 for UEP?</p>

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<p>1 A. Yes.</p> <p>2 Q. What, if anything, did Mr. Wilson say at</p> <p>3 the August 2007 committee meeting that related</p> <p>4 to UEP or long-range plans for UEP?</p> <p>5 A. Well, I -- I would -- I would -- I would</p> <p>6 think that most of it is covered within the</p> <p>7 minutes that I could recall. I don't know of</p> <p>8 anything outside of what's already listed in</p> <p>9 these minutes.</p> <p>10 Q. Okay. And other than this presentation</p> <p>11 by Mr. Wilson at the UEP meeting in August</p> <p>12 2007, did you have any other contacts with</p> <p>13 United Potato Growers regarding Michael Foods</p> <p>14 egg products purchases or its participation in</p> <p>15 the egg industry generally?</p> <p>16 A. No, I did not.</p> <p>17 Q. Do you buy the potatoes that Michael</p> <p>18 Foods uses for its potato business?</p> <p>19 A. No.</p> <p>20 Q. Who is your counterpart at Michael Foods</p> <p>21 who is responsible for that?</p> <p>22 A. I think -- I believe it is Rett Landers.</p> <p>23 Q. When you got back from the meeting in</p> <p>24 Salt Lake City, did you ever talk to him about</p> <p>25 the supply control program that United Potato</p>	<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And he's retired now?</p> <p>4 A. Yes.</p> <p>5 Q. Does he do any consulting for the</p> <p>6 company?</p> <p>7 A. Yes, a small amount of consulting.</p> <p>8 Q. And as between -- was there anybody else</p> <p>9 directly involved in egg procurement other</p> <p>10 than you and Mr. Catherman?</p> <p>11 A. We have some schedulers, logistics</p> <p>12 people, directors who assist us. There's</p> <p>13 actually a total of five of us.</p> <p>14 Q. But when it comes to negotiations with</p> <p>15 suppliers, it's you and Mr. Catherman?</p> <p>16 A. Primarily, yes.</p> <p>17 Q. And am I correct that you buy both liquid</p> <p>18 eggs and shell eggs for Michael Foods?</p> <p>19 A. Yes.</p> <p>20 Q. And you said it's primarily liquid eggs,</p> <p>21 though?</p> <p>22 A. Yes, that would be the majority.</p> <p>23 Q. And in a typical year, how much money</p> <p>24 does Michael Foods spend to buy eggs or egg</p> <p>25 products?</p>
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<p>1 Growers had in place?</p> <p>2 A. I think I mentioned it to him. We were</p> <p>3 at the same meeting on a different topic. But</p> <p>4 I mentioned it to him just on a casual basis</p> <p>5 and he was familiar with United. But that's</p> <p>6 as far as it went.</p> <p>7 Q. Was he familiar with the fact that they</p> <p>8 had agreed to limit output and control supply?</p> <p>9 A. I don't know. I thought that he was, but</p> <p>10 I can't speak to that.</p> <p>11 Q. And as far as you know, has Randon Wilson</p> <p>12 or his law firm ever represented Michael</p> <p>13 Foods?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Has he ever represented you personally?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. All right. And we talked some this</p> <p>18 morning. So your primary responsibility at</p> <p>19 the company is egg procurement currently,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And I believe you said -- you've been</p> <p>23 doing that for how long?</p> <p>24 A. Since 1997.</p> <p>25 Q. 1997. And Mr. Catherman assisted you,</p>	<p>1 A. Oh, depending on egg markets because</p> <p>2 there's some of them -- some of those</p> <p>3 purchases are based on Urner Barry and then</p> <p>4 some are based -- most of them are based on</p> <p>5 grain. So, for instance, the last couple</p> <p>6 years with elevated grain prices of course</p> <p>7 that dollar number has been inflated. So</p> <p>8 probably in excess of a half a billion like,</p> <p>9 for instance, in the last year.</p> <p>10 Q. All right. And -- and I think you</p> <p>11 testified some about liquid pounds equivalent?</p> <p>12 A. Uh-huh.</p> <p>13 Q. So in liquid pounds equivalent, what are</p> <p>14 Michael Foods' current total egg needs?</p> <p>15 A. It would be approximately</p> <p>16 1.2 billion-plus, I guess -- yeah, a little</p> <p>17 over 1.2 billion.</p> <p>18 Q. Okay. And of that -- 1.2 billion</p> <p>19 pounds --</p> <p>20 A. Pounds.</p> <p>21 Q. -- correct? All right.</p> <p>22 And of that 1.2 billion pounds,</p> <p>23 approximately how much comes from the</p> <p>24 production from company-owned hens?</p> <p>25 A. Approximately 325 million to 350 million</p>

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<p>1 and then the balance would all be external.</p> <p>2 Q. And how have -- has the total -- that</p> <p>3 1.2 billion, has that changed over time?</p> <p>4 A. It's been relatively flat the last</p> <p>5 several years with -- some of what happened</p> <p>6 with the economy, I think, is what we --</p> <p>7 that's been our speculation and it's caused</p> <p>8 some of that in -- from 2008 and 2009 on. I</p> <p>9 don't think the food service economy is</p> <p>10 still -- is what we're told that accounts for</p> <p>11 a good share of that. So it's been a --</p> <p>12 relatively stable.</p> <p>13 Q. And just briefly, what are liquid eggs?</p> <p>14 A. Liquid eggs are -- they can be liquid</p> <p>15 whole egg. And when I say "liquid whole egg,"</p> <p>16 what we're doing is we're breaking the egg and</p> <p>17 it's -- of course it's made of yolk and whites</p> <p>18 or albumin and we're really just mixing both</p> <p>19 parts together. And that's what's called</p> <p>20 liquid whole egg.</p> <p>21 Q. Okay.</p> <p>22 A. And that's the largest portion of our</p> <p>23 demand and our supply potentially in the food</p> <p>24 service arena.</p> <p>25 And then you can also have the separated</p>	<p>1 farm and then it comes off the farm in</p> <p>2 tankers.</p> <p>3 Q. Okay. And who are your primary suppliers</p> <p>4 for shell eggs?</p> <p>5 A. Let's see. In the East Coast there's --</p> <p>6 our biggest share of shells is in the East</p> <p>7 Coast. But it would be a group called Wenger</p> <p>8 Feeds. There's another feed group called</p> <p>9 Esbenshade, E-s-b-e-n-s-h-a-d-e, kind of like</p> <p>10 it sounds, I think.</p> <p>11 Q. Right.</p> <p>12 A. And then there's a number of</p> <p>13 independents, small -- smaller procedures. In</p> <p>14 the Midwest, we -- in addition to a few</p> <p>15 smaller external suppliers, we also have</p> <p>16 contract producers located in Nebraska, South</p> <p>17 Dakota that -- it's a farmer's premises but</p> <p>18 it's our birds that are covered under the</p> <p>19 program. And that's where a lot of our shell</p> <p>20 comes -- in the Midwest comes off of contract</p> <p>21 producers, what we call -- we have contract</p> <p>22 suppliers and contract producers.</p> <p>23 Q. And the contract producers, they</p> <p>24 have -- Michael Foods owns the hens, correct?</p> <p>25 A. Yes. And it's in their facilities.</p>
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<p>1 products, which would be yolk, liquid egg</p> <p>2 yolks and liquid egg whites. So that's why we</p> <p>3 talk about liquid whole like equivalent as</p> <p>4 kind of the common denominators.</p> <p>5 Q. And the liquid eggs, are they typically</p> <p>6 pasturized or not?</p> <p>7 A. Everything we buy is unpasturized.</p> <p>8 Q. Is there a reason why it's not</p> <p>9 pasturized?</p> <p>10 A. That's what we do. We bring it into one</p> <p>11 of our facilities and then we process --</p> <p>12 pasturize process and package into some other</p> <p>13 format.</p> <p>14 Q. And who are Michael Foods' primary</p> <p>15 suppliers for liquid eggs?</p> <p>16 A. Fremont Farms of Iowa, the Center Fresh</p> <p>17 Group. There's an LLP in Ohio called Trillium</p> <p>18 Farms, T-r-i-l-l-i-u-m. Daybreak Foods,</p> <p>19 Rembrandt Foods. And there's a host of</p> <p>20 others. That would be the major liquid</p> <p>21 suppliers. And most of -- all of that egg</p> <p>22 that I just described from those people is all</p> <p>23 what we call inline, in other words, we're</p> <p>24 receiving it in tanker format. It's all</p> <p>25 broken on site on the production side of the</p>	<p>1 Q. Right. Are you familiar with the -- with</p> <p>2 a company called Sunbest Papetti's,</p> <p>3 P-a-p-e-t-t-i-'s?</p> <p>4 A. Yes.</p> <p>5 Q. And is Sunbest Papetti's a shell egg</p> <p>6 producer?</p> <p>7 A. Yes.</p> <p>8 Q. And they're located in Iowa?</p> <p>9 A. Southwest Iowa.</p> <p>10 Q. And from -- at some time in the past they</p> <p>11 were a supplier to Michael Foods?</p> <p>12 A. Yes, they were. In the late '90s, early</p> <p>13 2000s they were one of our shell suppliers.</p> <p>14 Q. Right. And when did they cease to be a</p> <p>15 supplier?</p> <p>16 A. I can't tell you the date. It was</p> <p>17 sometime in early -- I think early 2000s.</p> <p>18 Q. Is there a reason that they ceased to be</p> <p>19 a supplier?</p> <p>20 A. They found a different market. In other</p> <p>21 words, they -- when they were supplying us,</p> <p>22 they were supplying nest run breaking stock,</p> <p>23 which we would pick up at the farm in shell</p> <p>24 form and then transport it to a breaking</p> <p>25 operation like in a plant -- more of a plant</p>

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<p>1 environment and then we would actually break 2 offline or load those eggs on a machine and 3 break them for liquid egg. What they did when 4 they switched from us is they actually put a 5 grading machine in to go into the retail shell 6 market under a marketing contract with 7 somebody else. 8 Q. And the Papetti in Sunbest Papetti's, 9 that's the same Papetti family that owned 10 Papetti's that was acquired by Michael Foods? 11 A. Yes, it was. 12 Q. Was Sunbest Papetti's a UEP Certified 13 producer? 14 A. I don't know for certain. Well -- I 15 don't know. 16 Q. Do you know whether Sunbest Papetti's was 17 a USEM member? 18 A. Don't know that either. 19 Q. I think you said earlier today that 20 Michael Foods typically has long-term 21 contracts with its suppliers? 22 A. Yes. The major -- the big suppliers we 23 do have -- we have really long-term contracts. 24 Q. And those are usually seven years? 25 A. Seven to ten years.</p>	<p>1 bank or whoever and borrow the money for the 2 project, correct? 3 A. Essentially, yes. They may have other 4 customers besides us. But in some cases -- I 5 mean, a whole site may be dedicated to us, but 6 not necessarily. It depends. There's 7 different arrangements there. 8 Q. Right. And the pricing mechanism in your 9 supply contracts, some are tied to Urner 10 Barry, correct? 11 A. Almost all of our -- not almost all. All 12 of our long-term contracts are grain -- more 13 or less tied to a grain formula. 14 Q. Right. And if you have shorter term 15 contracts, sometimes they may be tied to Urner 16 Barry? 17 A. Yes. 18 Q. And for Urner Barry, the Urner Barry 19 quotes for what, for the nest run breaking 20 stock? 21 A. Yeah, they quote nest run breaking stock 22 or breaking -- and that's -- if we're buying 23 shell, that would be the market probably we'd 24 point to as the indicator. Or if it's liquid, 25 they also quote unpasteurized liquid whole egg</p>
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<p>1 Q. And why do you have long-term contracts? 2 A. Just to guarantee the supply and it's 3 just a part of our overall supply chain, 4 number 1. Number 2, most of those long-term 5 supply agreements were greenfield construction 6 projects. And those projects can only be 7 financed in today's business environment with 8 a long-term marketing -- or a marketing 9 contract for the producer because most of the 10 financing world will not entertain the amount 11 of capital or loan -- you know, the financing 12 to undertake those projects without some kind 13 of a long-term marketing agreement. 14 Q. All right. And those kinds of 15 projects -- and you talked about them earlier 16 today. So that's a project that your egg 17 supplier, they're spending the money, they're 18 building whatever the facility is, correct? 19 A. Right. 20 Q. And they own it, correct? 21 A. And they own the facility and the birds. 22 And it's really a pure supply contract. 23 Q. Right. And it's based upon the fact that 24 they have a long-term commitment from Michael 25 Foods to buy that they're able to go to the</p>	<p>1 tankers, unpasteurized white tankers and 2 unpasteurized yolk tankers. And so -- 3 THE COURT REPORTER: Hold on. 4 (Off the record.) 5 BY MR. KINNEY: 6 Q. What's the relative cost for eggs that 7 Michael Foods produces internally versus those 8 that it buys from others? 9 A. Our comparison shows them to be roughly 10 equivalent. Ours are usually -- depends what 11 you use for -- they're -- I'm sorry. Let me 12 start over. They're usually internal -- our 13 internal costs are lower than the external 14 long-term grain-based contract. Part of that, 15 though, depends is -- it depends on what you 16 use for a rate of return or an IRR calc on the 17 investment or the capital because we do not 18 charge our internal for the interest or the 19 financing cost. So it's kind of an accounting 20 issue really. But I think our internal is 21 normally going to be lower cost. 22 Q. And how many -- how do you determine how 23 many eggs to buy? 24 A. We are provided demand numbers from our 25 supply -- or our planning group out of</p>

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<p>1 Minneapolis, out of our corporate group. So</p> <p>2 they're rolling up the demand plans from our</p> <p>3 three channels. We roll it up biweekly,</p> <p>4 monthly, annually and we look in seven- or</p> <p>5 ten-year windows with assumptions on growth</p> <p>6 rates.</p> <p>7 Q. And when -- in 2006, when Michael Foods</p> <p>8 became a UEP Certified producer, how did that</p> <p>9 affect Michael Foods' egg purchases?</p> <p>10 A. Well, as we looked at some of the</p> <p>11 exhibits earlier today, it certainly caused a</p> <p>12 ripple during that transition. But we also</p> <p>13 had new long-term supply contracts coming on</p> <p>14 during that period. And so we had already</p> <p>15 planned for a certain amount of growth</p> <p>16 occurring in '05, '06, '07 and beyond. And so</p> <p>17 we either had to secure more egg one way or</p> <p>18 the other, or we had to -- as it turned out,</p> <p>19 we -- we had enough contracts to get us</p> <p>20 through the transition because our demand plan</p> <p>21 leveled off in '07 and '08 as the economy</p> <p>22 turned south a little bit. And so we actually</p> <p>23 were able to withstand that transition fairly</p> <p>24 easily just because of all the new external</p> <p>25 supply we had coming on board.</p>	<p>1 A. And which number?</p> <p>2 Q. Internal Production Full Phased April 1,</p> <p>3 2008, 9,731,507. What's that 9.7 million?</p> <p>4 A. Oh, that was projected layer capacity.</p> <p>5 In other words, that was -- right above that</p> <p>6 was 14,400,000 --</p> <p>7 Q. Oh, I see.</p> <p>8 A. -- being reduced down --</p> <p>9 Q. That's the net number?</p> <p>10 A. Or that was the assumed or projected net</p> <p>11 number depending exactly how the</p> <p>12 implementation went.</p> <p>13 Q. In Mr. Ostrander's memo, the first page</p> <p>14 of Exhibit 23 --</p> <p>15 A. Okay.</p> <p>16 Q. -- there's a statement: Is our current</p> <p>17 cost in Gaylord roughly 2 cents per pound</p> <p>18 impact from the lower density and non molt.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What's that mean?</p> <p>22 A. Gaylord was already in an animal welfare</p> <p>23 program. They were our Burger King site. So</p> <p>24 they had been on actually a program that</p> <p>25 exceeded UEP since 2002 or '03, whenever, I</p>
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<p>1 Q. But generally you had to buy more eggs --</p> <p>2 A. Yes.</p> <p>3 Q. -- externally?</p> <p>4 A. Yes, we did.</p> <p>5 Q. Could you get -- you should have -- from</p> <p>6 your earlier testimony Exhibit 23. It's the</p> <p>7 UEP impact analysis.</p> <p>8 MR. GREENE: 2005 or 2006?</p> <p>9 MR. KINNEY: Exhibit 23. 2005.</p> <p>10 BY MR. KINNEY:</p> <p>11 Q. Turning to page that's coded 308. Is</p> <p>12 this correct, that -- am I reading this</p> <p>13 correctly, that when the UEP spacing</p> <p>14 guidelines were fully implemented it reduced</p> <p>15 the internal flock size by 4.7 million hens?</p> <p>16 A. Yes. That's what this analysis was</p> <p>17 showing. That would be a correct assumption.</p> <p>18 Q. And that would be when you hit 67 square</p> <p>19 inches?</p> <p>20 A. Yes, I think that's -- yes.</p> <p>21 Q. Okay. And the next figure, Internal</p> <p>22 Production Full Phased 4/1/2008 with the</p> <p>23 9.7 million, what's that?</p> <p>24 A. Is that the portrait page (indicating)?</p> <p>25 Q. Yes.</p>	<p>1 think, we implemented the Burger King animal</p> <p>2 welfare program. So there was a volume</p> <p>3 involved there. We had converted the whole --</p> <p>4 because of the volume involved with the Burger</p> <p>5 King demand, we were able to convert the whole</p> <p>6 site. So the whole Gaylord farm then was our</p> <p>7 Burger King farm you might say for the most</p> <p>8 part. And so we had experience with that</p> <p>9 farm. So we were using them as our surrogate</p> <p>10 to kind of gauge the cost. Although they were</p> <p>11 slightly different. They were even a higher</p> <p>12 cage space requirement than UEP fully phased.</p> <p>13 So there was a little bit of estimating going</p> <p>14 on when we were doing this.</p> <p>15 Q. Was the estimate that when Michael Foods</p> <p>16 became a 100 percent UEP Certified producer</p> <p>17 that there would be an additional cost that</p> <p>18 Michael Foods would incur?</p> <p>19 A. Yes.</p> <p>20 Q. And that was roughly -- at this time in</p> <p>21 2005 it was estimated at \$0.02 a pound?</p> <p>22 A. Yes. That was the number we were using</p> <p>23 at that point.</p> <p>24 Q. And what costs would be higher once you</p> <p>25 were a UEP Certified producer?</p>

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<p>1 A. The primary difference is the throughput. 2 The capital -- a lot of it just related -- is 3 related all to throughput and capital because 4 the -- the facility -- 5 Q. What do you mean by throughput? 6 A. When you reduce the capacity within, say, 7 a different facility -- 8 Q. Yes. 9 A. -- the throughput in that facility, the 10 capital stays the same or the cost. So 11 whatever your costs were to construct that 12 facility, they just got reduced -- you know, 13 let's say if you went from -- 14 Q. So you have fewer hens to spread the cost 15 over? 16 A. Yes, yes. That's exactly right. 17 Q. All right. 18 A. And there's -- there -- you know, all of 19 your -- and a lot of your costs -- I know 20 every producer probably has their own 21 different theory on how they approach that or 22 how they view it. But we generally look at 23 all of the costs in those layer houses as 24 being a fixed cost. 25 Q. And were there also costs that would be</p>	<p>1 A. Okay. 2 Q. There's a line item, existing -- Less: 3 Existing UEP ACC Supply with a figure of 4 7.3 million. What's that? 5 A. We did have UEP supply in our network 6 even in 2004 or '05 or in this period when we 7 did this. And the reason we had UEP ACC 8 supply was it was almost like -- I guess we 9 described it as -- there were some producers 10 that we had contracts with that were supplying 11 retail shell markets where they had to be -- 12 they had to convert to ACC back earlier in 13 2002, '03 and -- so we were receiving -- so 14 because of the 100 percent rule, all of their 15 eggs then became UEP ACC. So we were 16 receiving some -- 17 Q. Whether you needed them or not? 18 A. Yeah. We didn't spec it. And of course, 19 you know, that's -- but that's -- yeah, they 20 had no option. So that was the market they 21 had. So yeah, we -- so that's what we -- we 22 did account for that or estimate what that 23 was. But a lot of it was -- it wasn't always 24 necessarily the right quality for us depending 25 on the product category, whatever. There were</p>
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<p>1 lower if you had, for example, 4.7 million 2 fewer hens to feed? 3 A. There was -- there was an estimate of 4 some productivity gained by giving the birds 5 more square inches that we tried to account 6 for to help offset some of that production 7 loss or capacity loss, but it doesn't offset 8 the -- you know, it doesn't come close to 9 offsetting it all. But there is some net gain 10 there -- or not net gain. I should say 11 there's some gain. 12 Q. Before Michael Foods became a UEP 13 Certified producer, did it molt its flocks? 14 A. Yes, we did. 15 Q. And did you continue to molt its flocks 16 after it became a UEP Certified producer? 17 A. No, we did not -- well, I shouldn't say 18 that. We still molt on occasion depending on 19 flock -- or chick availability and other 20 things. But the majority of our policy is to 21 not molt. But that's really more of a 22 Tim Bebee question. 23 Q. Okay. In Exhibit 23, page 308 -- 24 A. On page 3 you said? 25 Q. 308.</p>	<p>1 other issues involved. But we did have that 2 much in our network at that moment in time. 3 Q. Who were those suppliers who were UEP 4 Certified producers? 5 A. One of them was -- one of the larger ones 6 at that point was Wenger, the Wenger Feed 7 Company in Pennsylvania. And they had 8 large -- a large market or several large 9 markets that required the ACC certification. 10 Q. And I think you testified earlier today 11 regarding Jim Dean of Center Fresh? 12 A. Uh-huh. 13 Q. And you served with Mr. Dean both on the 14 UEP board and the Long Range Planning 15 Committee, correct? 16 A. Yes. 17 Q. And Center Fresh is a significant 18 supplier today to Michael Foods? 19 A. Yes, it is. 20 Q. And didn't Dean tell Michael Foods that 21 he didn't agree with the UEP Certified program 22 and that until UEP develops a program for the 23 egg products industry that is not intended to 24 be a supply management but a customer-driven 25 program, Center Fresh wasn't going to get</p>

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<p>1 involved as a UEP Certified producer?</p> <p>2 A. I'm not -- you know, I don't -- and I'm</p> <p>3 not aware of exactly his comments. I know</p> <p>4 there was -- you know, I know he had some</p> <p>5 strong feelings on that, but I don't remember</p> <p>6 the exact, you know, wording or how he did it.</p> <p>7 (Exhibit EE marked for</p> <p>8 identification.)</p> <p>9 BY MR. KINNEY:</p> <p>10 Q. Let me show you what's been marked as</p> <p>11 Exhibit EE. And it's -- I believe it's</p> <p>12 produced in native file format and it's coded</p> <p>13 MFI0328649.</p> <p>14 MR. GREENE: John, what did you say</p> <p>15 about its production?</p> <p>16 MR. KINNEY: It was produced in a</p> <p>17 native file format. That's why it doesn't</p> <p>18 have coding on every page.</p> <p>19 MR. GREENE: So like an Excel?</p> <p>20 MR. KINNEY: Yes.</p> <p>21 BY MR. KINNEY:</p> <p>22 Q. All right. And directing your attention,</p> <p>23 Mr. Baker, to this questionnaire, third page.</p> <p>24 There's an entry for Center Fresh Egg Farm,</p> <p>25 the third entry from the top.</p>	<p>1 not intended to be a supply management but a</p> <p>2 customer driven program, Dooyema and Sons will</p> <p>3 sit on the sidelines.</p> <p>4 Do you recall getting that information</p> <p>5 from Dooyema?</p> <p>6 A. No, I do not. But Dooyema was associated</p> <p>7 with Center Fresh. So that would -- probably</p> <p>8 came at the same time as the Dean's.</p> <p>9 Q. Did you ever have any discussions with</p> <p>10 Jim Dean or anybody else at Center Fresh or</p> <p>11 Dooyema regarding the statements in this</p> <p>12 questionnaire?</p> <p>13 A. I don't recall if we did specifically,</p> <p>14 no.</p> <p>15 Q. Is there any reason you didn't have a</p> <p>16 discussion with them?</p> <p>17 A. Well, we just knew they were not UEP.</p> <p>18 Q. Wasn't UEP. Jim Dean was on the UEP</p> <p>19 board --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- was he not?</p> <p>22 A. Yes.</p> <p>23 Q. So how much more UEP can you be?</p> <p>24 A. Well, he was not UEP Certified.</p> <p>25 MR. GREENE: Object to the</p>
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<p>1 Do you see that?</p> <p>2 A. (Reviews document.) Yes.</p> <p>3 Q. And there's a column, UEP Intentions.</p> <p>4 And it states, quote: At this time, Center</p> <p>5 Fresh does not have a certification. Am a UEP</p> <p>6 board member and do not agree with the</p> <p>7 outlined program. Until UEP develops a</p> <p>8 program for the egg products industry that is</p> <p>9 not intended to be a supply management, but a</p> <p>10 customer driven program. Center Fresh will</p> <p>11 sit on the sidelines.</p> <p>12 Do you recall getting that information</p> <p>13 from Mr. Dean?</p> <p>14 A. No, I do not.</p> <p>15 Q. And there's a similar statement --</p> <p>16 there's -- on that same page if you drop down,</p> <p>17 there's a supplier, I'll probably mispronounce</p> <p>18 it, Dooyema and Sons, D-o-o-y-e-m-a.</p> <p>19 A. "Dooyema." "Dooyema" is how you</p> <p>20 pronounce it.</p> <p>21 Q. "Dooyema." And that also says: At this</p> <p>22 time, Dooyema and Sons does not have a</p> <p>23 certification. We do not agree with the</p> <p>24 outlined program. Until UEP develops a</p> <p>25 program for the egg products industry that is</p>	<p>1 characterization, argumentative.</p> <p>2 THE WITNESS: Yeah, he was not UEP</p> <p>3 certified. I should've clarified that.</p> <p>4 BY MR. KINNEY:</p> <p>5 Q. At any of the board meetings that you</p> <p>6 went to with Mr. Dean, did he stand up and</p> <p>7 say, "This program stinks, I'm against it,</p> <p>8 it's a supply management program"?</p> <p>9 A. No, no, I never heard that, no.</p> <p>10 Q. Did he ever say anything negative about</p> <p>11 the program?</p> <p>12 A. He at different points was not</p> <p>13 necessarily in favor of the 100 percent rule,</p> <p>14 you know, and some of those things at one</p> <p>15 point. But I don't -- I've never heard any of</p> <p>16 those commentaries you're suggesting. I don't</p> <p>17 recall them anyway.</p> <p>18 Q. Are you familiar with something that was</p> <p>19 called the Michael Foods Procurement Strategic</p> <p>20 Sourcing Initiative?</p> <p>21 A. Yes, I am.</p> <p>22 Q. And what's that?</p> <p>23 A. It was a project that we worked on in</p> <p>24 2002 -- or started in 2002 and it involved the</p> <p>25 McKinsey group to work on strategic sourcing</p>

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<p>1 and we targeted the egg procurement group or 2 supply for that particular project. 3 Q. And in that connection -- are you 4 familiar with -- I've seen in some of the 5 documents there's a reference to a make-or-buy 6 decision? 7 A. Yeah. That was, I think, one of the 8 exercises or things we went through to 9 revalidate what we were doing regarding doing 10 the long-term external supply contracts versus 11 building our own capacity. 12 Q. Who hired McKinsey to do this, to assist? 13 A. Well, I mean, other -- I mean, Michael 14 Foods or -- I'm not sure I understand. 15 Q. Well, did you or -- who had the idea to 16 hire McKinsey? 17 A. There was -- there was a former employee 18 we had that was in the purchasing area. His 19 name was Tim Larson. And he -- he was maybe 20 the first one who recommended we use them 21 or -- and he worked with us on that project. 22 MR. GREENE: At any appropriate 23 point I could use a break. 24 MR. KINNEY: Let's take it right 25 now.</p>	<p>1 then with subheadings under that. 2 What does that refer to? 3 A. That was -- that was speaking to the 4 outsourcing rather than buying -- or, I'm 5 sorry, not buying, rather than building 6 production or farm production or egg 7 production facilities, this was suggesting 8 that we would outsource them. 9 Q. Had a decision actually been made as of 10 September 2001 whether to cap the internal 11 production facilities? 12 A. You know, I don't remember exactly where 13 this was in context because that's really a 14 decision that we look at ongoing. I mean, 15 it's kind of an annual -- it's not just a 16 one-time thing and we never look at it again, 17 you know. It's reviewed on a regular basis. 18 But this suggested a little otherwise. But we 19 really do review it regularly. 20 Q. What's the current thinking at Michael 21 Foods, is it more cost effective to purchase 22 on the outside or to rely on building new 23 internal production capacity? 24 MR. GREENE: Object to the form. 25 THE WITNESS: (No response.)</p>
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<p>1 THE VIDEOGRAPHER: We are going off 2 the record. 3 The time is 3:58 p.m. 4 (Recess.) 5 THE VIDEOGRAPHER: We are back on 6 the record. 7 The time is 4:10 p.m. 8 (Exhibit Number X marked for 9 identification.) 10 BY MR. KINNEY: 11 Q. Mr. Baker, I'm going to show you what has 12 been marked as Exhibit X. And it's a two-page 13 document coded MFI0018744 and 745. It has the 14 heading Procurement Strategic Planning 15 Meeting, Wednesday, September 12th, 2001. 16 Can you tell us what this document is? 17 A. (Reviews document.) It was -- it was -- 18 it was a summary or an outline of our 19 procurement strategy, some of our objectives 20 kind of framing up our overall program. 21 Q. Okay. And directing your attention 22 under -- the first page of Exhibit X under 23 section 2, the third bullet item, which refers 24 to: Capped our capabilities for internally 25 owned and operated production facilities. And</p>	<p>1 MR. GREENE: When I object, unless 2 I instruct you not to answer, it doesn't mean 3 you can't answer it. 4 THE WITNESS: Okay. Our -- 5 currently our analysis would indicate that we 6 would -- we're outsourcing, Michael Foods is 7 outsourcing, yes. 8 BY MR. KINNEY: 9 Q. We talked before about, which gave the 10 court reporter fits, nest run breaking stock. 11 All right. So what is nest run breaking 12 stock? 13 A. That would be -- we -- the other way we 14 refer to it sometimes is that's the naked egg 15 coming out of the chicken. So, in other 16 words, in an egg production facility you have 17 all your egg belts coming probably -- I guess 18 depending what the length of the house. All 19 the egg collection gear brings the equipment 20 to one end of the chicken house. And then, 21 you know, it will come to a cross belt that 22 takes it on to a processing facility or a 23 packing facility of some form depending what 24 kind of farm it is. And so what we call nest 25 run is that naked egg coming out of the</p>

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<p>1 chicken house.</p> <p>2 Q. And does -- I take it a nest run egg</p> <p>3 based on something that you said with respect</p> <p>4 to Sunbest Papetti's is that it's not a graded</p> <p>5 egg?</p> <p>6 A. Right. And that it could go either way</p> <p>7 depending on other factors. But yeah, at that</p> <p>8 point it's eligible technically. It could go</p> <p>9 either way.</p> <p>10 (Exhibit BB marked for</p> <p>11 identification.)</p> <p>12 BY MR. KINNEY:</p> <p>13 Q. Let me show you Exhibit BB. Exhibit BB</p> <p>14 is a document dated January 25, 2008, MFI Food</p> <p>15 Ingredient Sales Meeting. It's coded</p> <p>16 MFI0038661 through 698.</p> <p>17 Mr. Baker, what is Exhibit BB?</p> <p>18 A. (Reviews document.) Oftentimes when our</p> <p>19 sales groups or channels have their sales</p> <p>20 meetings, they request like kind of an update,</p> <p>21 just an informational update from us, from egg</p> <p>22 procurement on the state of the industry as we</p> <p>23 know it since we're usually the ones working</p> <p>24 in UEP, working in -- or, you know, other</p> <p>25 organizations. So they oftentimes will ask</p>	<p>1 Urner Barry markets. And there is a</p> <p>2 statement: Very limited construction of new</p> <p>3 or remodelled layer facilities in 2006 and</p> <p>4 2007.</p> <p>5 Do you know what the basis for that</p> <p>6 statement was?</p> <p>7 A. Similar to the other one. Although this</p> <p>8 one brings a little context to the first one</p> <p>9 you asked about. I think what we were</p> <p>10 referring to was that because of all the</p> <p>11 animal activist activities out there and a lot</p> <p>12 of conversation about moving to cage-free,</p> <p>13 stated ballot initiatives, those kinds of</p> <p>14 issues, there was a lot of confusion in the</p> <p>15 industry about expansion, what to build, you</p> <p>16 know, were they -- if they built something,</p> <p>17 would it be legislated out of a useful life in</p> <p>18 two years or five years because this is a very</p> <p>19 capital-intensive industry. So a facility</p> <p>20 is -- even a small facility is a lot of money.</p> <p>21 Q. All right.</p> <p>22 A. And so I think -- I believe that's what</p> <p>23 this is about.</p> <p>24 (Exhibit DD marked for</p> <p>25 identification.)</p>
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<p>1 for just an informational update on, like I</p> <p>2 say, industry issues, the hot topics of the</p> <p>3 day and then we'll market -- what we see</p> <p>4 marketwise on our internal information.</p> <p>5 Q. All right. And directing your attention</p> <p>6 within the exhibit way towards the back. It's</p> <p>7 page 36, which is coded -- the last code is</p> <p>8 696. It's called 2008 Urner Barry Markets.</p> <p>9 Do you have that?</p> <p>10 A. Yes.</p> <p>11 Q. All right. And there's a statement:</p> <p>12 Construction of new or remodelled layer</p> <p>13 facilities will not provide any significant</p> <p>14 volume until 2009.</p> <p>15 What was the -- what's the basis for that</p> <p>16 statement?</p> <p>17 A. I'm not sure now out of context. I'd</p> <p>18 have to go back and look through more detail.</p> <p>19 I don't know exactly if that was referring to</p> <p>20 something we were doing, or if that was just a</p> <p>21 general comment we made about the industry. I</p> <p>22 have to admit I can't tell you.</p> <p>23 Q. All right. And there's a similar</p> <p>24 statement if you go earlier. It's the page</p> <p>25 coded 666, which is -- this is regarding 2007</p>	<p>1 BY MR. KINNEY:</p> <p>2 Q. Let me show you what's been marked as</p> <p>3 Exhibit DD, which is a document that's emails</p> <p>4 and everything else starting February 7, 2003.</p> <p>5 And it's coded MFI0039904 through 907.</p> <p>6 And my question is: What was the reason</p> <p>7 for this request for an assessment of the</p> <p>8 market impact of a -- starting in 2003 if a</p> <p>9 new layer hen facility were constructed with</p> <p>10 an additional 5 to 10 million hens?</p> <p>11 A. (Reviews document.) This was a follow-up</p> <p>12 to the McKinsey study that you inquired about</p> <p>13 earlier. And this was a follow-up to that</p> <p>14 project, sort of. And while we thought we --</p> <p>15 we had our own opinions internally, I'm</p> <p>16 speaking of Mr. Catherman and myself, there</p> <p>17 were those in our -- in that project group</p> <p>18 that felt we needed some third party or some</p> <p>19 other -- some other expert opinions on the</p> <p>20 subject.</p> <p>21 So that's what this was about is they</p> <p>22 were -- we were soliciting some input from</p> <p>23 outside economists and/or the Urner Barry</p> <p>24 market report.</p> <p>25 Q. Was Michael Foods considering building</p>

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<p>1 this new 5-to-10-million-hen inline facility?</p> <p>2 A. Yes.</p> <p>3 Q. And I take it it was not -- that project</p> <p>4 did not go forward?</p> <p>5 A. Yes, we did, in fact, built several -- a</p> <p>6 couple of these multiple ones. Some of the</p> <p>7 ones we talked about earlier, I don't know if</p> <p>8 you recall because this was in 2003, I think,</p> <p>9 pretty sure that the -- the Center Fresh</p> <p>10 expansion went off as planned. We even did a</p> <p>11 secondary expansion in the Fremont Farms</p> <p>12 group, Golden Oval constructed and we -- and</p> <p>13 the IPRO project was for a 4 million-bird</p> <p>14 greenfield site in Ohio. So we actually</p> <p>15 ignored this and we did what we were going to</p> <p>16 do, because only with inline farms do we get</p> <p>17 the right egg that fits our business model.</p> <p>18 So it's difficult for us to find existing egg</p> <p>19 supply that works or really fills all of our</p> <p>20 criteria. So that's why our previous position</p> <p>21 has always been to do these kinds of projects.</p> <p>22 Q. And when you said we and these kinds of</p> <p>23 projects, what we talked about before, these</p> <p>24 are situations where you go to somebody like</p> <p>25 Center Fresh, you make a long-term commitment</p>	<p>1 transaction involving Michael Foods.</p> <p>2 A. Yes. Okay.</p> <p>3 Q. Prior to that transaction, did Primera</p> <p>4 Foods own layer hens?</p> <p>5 A. We were never sure if they -- we didn't</p> <p>6 think that they did and we're still not sure</p> <p>7 if they did. But if they did -- there's a</p> <p>8 question that we're unravelling right now.</p> <p>9 But it was a very small number. They did have</p> <p>10 a large supply contract similar to our</p> <p>11 arrangements with a greenfield project in</p> <p>12 Iowa.</p> <p>13 Q. Have you ever heard of an egg producer</p> <p>14 called Creekwood Farms from Wisconsin?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that Primera</p> <p>17 owned -- for some period of time Primera or</p> <p>18 Primera's parent owned Creekwood Farms?</p> <p>19 A. I think I was aware of that, yeah.</p> <p>20 Q. And was Creekwood Farms a UEP producer?</p> <p>21 A. I don't know their status today.</p> <p>22 Q. Do you know during what time period</p> <p>23 Primera or Primera's parent owned Creekwood?</p> <p>24 A. It's been several years ago. And my</p> <p>25 understanding was they were -- they sold out</p>
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<p>1 to buy from them, they go out and get the</p> <p>2 financing, build the facility, own the</p> <p>3 facility and they sell you product, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Are you familiar with Primera Foods?</p> <p>6 A. Yes.</p> <p>7 Q. And are they also a producer of processed</p> <p>8 egg products?</p> <p>9 A. Yes.</p> <p>10 Q. Is Primera a UEP member?</p> <p>11 A. No.</p> <p>12 Q. Does Primera own any laying hens?</p> <p>13 THE WITNESS: Can --</p> <p>14 MR. GREENE: You're the witness.</p> <p>15 THE WITNESS: Okay. We --</p> <p>16 MR. GREENE: If there's an issue of</p> <p>17 privilege we need to discuss, we can talk</p> <p>18 about it.</p> <p>19 THE WITNESS: No. No, I'm just</p> <p>20 talking about is it okay for me to suggest to</p> <p>21 him --</p> <p>22 BY MR. KINNEY:</p> <p>23 Q. Well, let me try and make it easier for</p> <p>24 you.</p> <p>25 I know that there was a recent</p>	<p>1 or sold the farm. And I don't know --</p> <p>2 can't -- I don't know who bought them exactly.</p> <p>3 MR. KINNEY: Why don't we go off</p> <p>4 the record.</p> <p>5 THE VIDEOGRAPHER: We are going off</p> <p>6 the record.</p> <p>7 The time is 4:24 p.m.</p> <p>8 (Recess.)</p> <p>9 THE VIDEOGRAPHER: We are back on</p> <p>10 the record.</p> <p>11 The time is 4:27 p.m.</p> <p>12</p> <p>13 EXAMINATION</p> <p>14</p> <p>15 BY MR. RAYLE:</p> <p>16 Q. Good afternoon, Mr. Baker. My name is</p> <p>17 Merrick Rayle. And my firm represents the</p> <p>18 indirect purchasers. I have just a -- very</p> <p>19 few questions.</p> <p>20 Please look at Exhibit DD again, refer to</p> <p>21 that.</p> <p>22 A. (Reviews document.) Okay.</p> <p>23 Q. And specifically on page 1 the reference</p> <p>24 to Don Bell, University of California, was he</p> <p>25 one of the individuals that -- with whom you</p>

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<p>1 consulted concerning the question posed in the</p> <p>2 exhibit?</p> <p>3 A. Yes.</p> <p>4 Q. Did you regard Mr. Bell as an expert?</p> <p>5 A. Yes.</p> <p>6 Q. On what topics?</p> <p>7 A. On -- he's an economist, I think, by</p> <p>8 trade. And he had also worked with UEP for an</p> <p>9 extensive period. So he's very familiar with</p> <p>10 the egg industry and the workings of the</p> <p>11 industry.</p> <p>12 Q. Is this the only occasion on which you</p> <p>13 consulted Mr. Bell?</p> <p>14 A. I don't recall. He -- I don't recall</p> <p>15 anything else.</p> <p>16 Q. Did he charge you for this opinion that</p> <p>17 he -- that's set out in Exhibit DD?</p> <p>18 A. You know, I don't think he did.</p> <p>19 Q. Please refer to Exhibit X, DAP Exhibit X.</p> <p>20 A. I'm sorry. Which one?</p> <p>21 Q. X. The X rated. This is a procurement</p> <p>22 strategic planning meeting document.</p> <p>23 A. Oh, here it is. I got it. Sorry. Okay.</p> <p>24 I have it.</p> <p>25 Q. Section 1, the second bullet: Our</p>	<p>1 would be accurate, but I don't know the exact</p> <p>2 number.</p> <p>3 Q. I'll represent to you that that's the</p> <p>4 figure that appears in the 410-K for the</p> <p>5 period December 29, 2012 that was introduced</p> <p>6 as DAP BBA.</p> <p>7 A. Okay.</p> <p>8 Q. You don't have it in front of you. Who</p> <p>9 at Michael Foods has principal responsibility</p> <p>10 for setting the price of Michael Foods shell</p> <p>11 eggs sold at retail?</p> <p>12 A. That would be somebody within our retail</p> <p>13 channel management group.</p> <p>14 Q. And who's the head of that management</p> <p>15 group?</p> <p>16 A. Today that manager is a gentleman by the</p> <p>17 name of Mark Anderson.</p> <p>18 Q. During the period 2000 through 2009, who</p> <p>19 would've been the primary person to set that</p> <p>20 policy?</p> <p>21 A. I don't know that I can answer. It was</p> <p>22 either Mark Anderson, but I don't know for</p> <p>23 sure. But the whole period would've been</p> <p>24 under Mark's tenure.</p> <p>25 Q. How long has Mr. Anderson been an</p>
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<p>1 competition is moved to long-term supply</p> <p>2 contracts.</p> <p>3 Have I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. How did -- perhaps Mr. Kinney asked you</p> <p>6 this. I may have missed it. Did you prepare</p> <p>7 this document?</p> <p>8 A. Yes.</p> <p>9 Q. And how did you learn that your</p> <p>10 competition, that is Michael Foods'</p> <p>11 competition had moved to long-term supply</p> <p>12 contracts?</p> <p>13 A. I don't recall exactly in this particular</p> <p>14 example how we learned that, if it was an</p> <p>15 industry rumor. I don't remember exactly</p> <p>16 where we heard it. But somehow we were made</p> <p>17 aware that some of our competitors were doing</p> <p>18 similar long-term contracts.</p> <p>19 Q. You just don't recall how?</p> <p>20 A. I don't.</p> <p>21 Q. What percentage of Michael Foods' net</p> <p>22 sales come from shell eggs sold at retail?</p> <p>23 A. I don't know that.</p> <p>24 Q. Would 3 percent sound about right?</p> <p>25 A. It's some number. I think single digits</p>	<p>1 employee of Michael Foods?</p> <p>2 A. I think a long time, but I'm not -- I</p> <p>3 can't answer that.</p> <p>4 Q. And he's still employed?</p> <p>5 A. Yes, he's still employed.</p> <p>6 Q. Do you know whether those prices were</p> <p>7 determined by reference to the Urner Barry</p> <p>8 quotation?</p> <p>9 A. I'm not sure. I do not deal with that</p> <p>10 area.</p> <p>11 Q. Mr. Anderson should know?</p> <p>12 A. Yes.</p> <p>13 Q. Who at Michael Foods has principal</p> <p>14 responsibility for determining shell egg</p> <p>15 production volume on a yearly basis, that is</p> <p>16 to say how many shell eggs Michael Foods would</p> <p>17 produce?</p> <p>18 A. That we produce on our company-owned</p> <p>19 facilities or that we authorize from our</p> <p>20 external suppliers or --</p> <p>21 Q. Company-owned facilities.</p> <p>22 A. Company owned facilities. That's kind of</p> <p>23 a mutual thing that we work with the farm</p> <p>24 production group. And then we -- you know, we</p> <p>25 measure -- not measure but we compare that</p>

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<p>1 against our total projected demand on an 2 annualized basis. 3 Q. And who would be the head of that group 4 that -- 5 A. Tim Bebee. 6 Q. To your knowledge, did Michael Foods ever 7 enter into any sort of a commercial 8 relationship with Midwest Poultry during the 9 period 2000 through 2009? 10 A. We have bought some shell eggs like 11 under-grades and some graded shell on a spot 12 basis from time to time, but no long-term 13 arrangements or contractual arrangements. 14 Q. To your knowledge, did Michael Foods ever 15 enter into negotiations with Midwest Poultry 16 with a view towards forming a joint venture 17 with Midwest Poultry? 18 A. I don't recall that we ever did that. 19 Q. Can you turn to DAP Exhibit W, please? 20 A. Okay. 21 Q. I apologize. I don't have my copy. But 22 I want to go to the antitrust compliance part 23 of that document. 24 MR. BARNES: Could you slow down 25 just for one second until I find the</p>	<p>1 (Exhibit Number 28 marked for 2 identification.) 3 BY MR. RAYLE: 4 Q. Exhibit 28 for identification is an email 5 from Mr. Bebee to various recipients. Let me 6 draw your attention to the attachment. 7 MS. ZIEMIANEK: Bates number, 8 Counsel? 9 MR. RAYLE: MF10321384 through 10 MF10321389. 11 BY MR. RAYLE: 12 Q. Attached to the document is an article 13 from the Wall Street Journal dated 14 September 23, 2008 titled Federal Prosecutors 15 Probe Food Price Collusion. 16 Have you seen a copy of this article 17 prior to today, sir? 18 A. (Reviews document.) Yes, I have. 19 Q. Let me refer you specifically to page 2 20 of 5 in the article and the last few digits on 21 the Bates number are 86. Are you there? 22 A. Yes. 23 Q. Okay. Penultimate paragraph: A Michael 24 Foods executive also declined to comment and 25 said the company is -- so on and so forth.</p>
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<p>1 exhibit -- 2 MR. RAYLE: Sure. 3 MR. BARNES: -- since they are not 4 in alphabetical order? Page 57. 5 THE WITNESS: Okay. 6 BY MR. RAYLE: 7 Q. And again, if Mr. Kinney asked you this 8 question, I apologize. Do you know who 9 drafted the antitrust compliance part of this 10 document? 11 A. No, I do not. 12 Q. Who at Michael Foods, if anyone, has the 13 responsibility for determining whether Michael 14 Foods' employees follow the antitrust 15 compliance policy set out in this document? 16 A. I don't know that I can answer to that. 17 I don't know. I don't know if it's human 18 resources. I'm not sure. 19 Q. Who would -- at Michael Foods would know 20 the answer to that question? 21 A. Somebody in our senior management group 22 or our HR department. 23 Q. Who's the head of your HR department? 24 A. Dennis Woodward. 25 Q. Okay.</p>	<p>1 Do you know who that Michael Foods 2 executive was, sir? 3 A. I do not. 4 Q. Who in 2008 would have the authority to 5 comment to the Wall Street Journal about a 6 food price collusion investigation? 7 A. It would have to be somebody in our 8 corporate office. But beyond that, I wouldn't 9 know. 10 MR. RAYLE: That's all I have at 11 this time. Thank you. 12 MR. GREENE: Mr. Barnes, do you 13 have questions? 14 MR. BARNES: Yes, I do. Thank you, 15 Counsel. I've got a few. 16 MR. GREENE: Maybe if you would 17 take that seat over there perhaps. 18 MR. BARNES: Switch with Mr. Rayle. 19 I would be happy to. 20 THE VIDEOGRAPHER: We are going off 21 the record. 22 The time is 4:38 p.m. 23 (Recess.) 24 THE VIDEOGRAPHER: We are back on 25 the record.</p>

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<p>1 The time is 4:38 p.m.</p> <p>2</p> <p>3 EXAMINATION</p> <p>4</p> <p>5 BY MR. BARNES:</p> <p>6 Q. Mr. Baker, my name is Donald Barnes. I</p> <p>7 represent one of the defendants in this</p> <p>8 litigation, Rose Acre Farms. You've been</p> <p>9 very, very patient today. I will try to be as</p> <p>10 brief as possible so we can get you out of</p> <p>11 here and you back home. I just have a few</p> <p>12 things that I would like to clear up for the</p> <p>13 record.</p> <p>14 First of all, in answer to an earlier</p> <p>15 question, you used the term "cull."</p> <p>16 Do you recall that?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And the question, I believe, was when you</p> <p>19 joined the certified program, did you have to</p> <p>20 get rid of chickens from your existing houses?</p> <p>21 A. No. I -- I think that was kind of a</p> <p>22 uni -- or a joint agreement with UEP that by</p> <p>23 allowing us to transition flock by flock on a</p> <p>24 rotational basis, then that kind of kept us</p> <p>25 out of that issue of having to destroy or</p>	<p>1 about the 50 percent requirement?</p> <p>2 A. No.</p> <p>3 Q. Let me direct your attention to what was</p> <p>4 originally marked by Mr. Neuwirth as Baker</p> <p>5 Exhibit 2. And hopefully they are in a form</p> <p>6 that you can easily find that exhibit.</p> <p>7 Do you have that exhibit in front of you,</p> <p>8 Mr. Baker?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Now, just to set the context of my</p> <p>11 question, Mr. Neuwirth asked you about a</p> <p>12 motion on the second page that you made which</p> <p>13 was seconded by Mr. Fortin --</p> <p>14 MR. GREENE: I'm sorry, you finish,</p> <p>15 but I'm going to object to the</p> <p>16 characterization.</p> <p>17 BY MR. BARNES:</p> <p>18 Q. Okay. Well, hopefully to cure the</p> <p>19 objection that's coming --</p> <p>20 MR. GREENE: Were you talking about</p> <p>21 the marketing committee?</p> <p>22 MR. BARNES: Yeah, marketing</p> <p>23 committee. It says "motion."</p> <p>24 MR. GREENE: Right. But the -- it</p> <p>25 says committee chairman Dolph Baker, is the</p>
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<p>1 dispose of birds to get to those numbers.</p> <p>2 That seemed to be rather --</p> <p>3 MR. GREENE: Let him ask the</p> <p>4 question.</p> <p>5 BY MR. BARNES:</p> <p>6 Q. But the term you used was "cull"?</p> <p>7 A. Yes.</p> <p>8 Q. C-u-l-l. And just so the Court and the</p> <p>9 jury is clear, what does the term "cull" mean?</p> <p>10 A. That would be to remove the birds and</p> <p>11 destroy them.</p> <p>12 Q. Thank you. You were asked by Mr. Kinney</p> <p>13 numerous questions about the Capper-Volstead</p> <p>14 Act and its application. Do you recall</p> <p>15 generally that line of questioning?</p> <p>16 A. Yes.</p> <p>17 Q. Are you a lawyer, Mr. Baker?</p> <p>18 A. No.</p> <p>19 Q. Do you have a legal training?</p> <p>20 A. No.</p> <p>21 Q. Did you ever read the Capper-Volstead</p> <p>22 Act?</p> <p>23 A. No.</p> <p>24 Q. Do you have any idea what the</p> <p>25 Capper-Volstead Act language actually says</p>	<p>1 name Dolph Baker.</p> <p>2 MR. BARNES: Under that there is</p> <p>3 the word "motion" with a colon.</p> <p>4 MR. GREENE: Correct.</p> <p>5 MR. BARNES: That says: It was</p> <p>6 moved by Baker and seconded by Fortin. That's</p> <p>7 what I was referring to.</p> <p>8 MR. GREENE: I just want to be</p> <p>9 clear, that's moved by Dolph Baker.</p> <p>10 MR. BARNES: Fine. I'm -- I</p> <p>11 appreciate the correction.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. Again, I'm not going to ask you</p> <p>14 substantively about that. But that was a</p> <p>15 questions -- an area that Mr. Neuwirth asked</p> <p>16 you about.</p> <p>17 Now I'd like to direct your attention to</p> <p>18 the very last page of this set of UEP board of</p> <p>19 directors meeting minutes.</p> <p>20 Are you on the last page, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Now, I found it interesting there's a</p> <p>23 list of speakers.</p> <p>24 Do you see that list?</p> <p>25 A. Yes.</p>

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<p>1 Q. And it appears that there are five 2 speakers, three Ph.D.s, is that correct? 3 A. Yes. 4 Q. And two congressmen. 5 Do you see that? 6 A. Yes. 7 Q. The first Ph.D. is a Dr. Bob Brackett. 8 He's identified as the direct for the Center 9 of Food Safety, and he addressed various 10 issues. 11 Do you see that? 12 A. Yes. 13 Q. Do you recall MR. Brackett attending that 14 meeting? 15 A. I do not specifically, no. 16 Q. The next identified speaker is a 17 Dr. Ron Dehaven who is an administrator at the 18 USDA APHIS, and he addressed a number of 19 topics. 20 Do you see that reference? 21 A. Yes. 22 Q. Do you know Dr. Dehaven? 23 A. I know who he is. He's spoke at more 24 than one UEP meeting. So I'm somewhat 25 familiar with his -- not personally, but I</p>	<p>1 listed as speakers, Congressman Bob Goodlatte 2 from Virginia. And these minutes indicate he 3 addressed a number of topics including animal 4 welfare. 5 Do you see that reference? 6 A. Yes. 7 Q. Do you have any recollection as to what 8 Congressman Goodlatte had to say about animal 9 welfare? 10 A. No, not specifically. 11 Q. The next reference to a congressman is to 12 Congressman Chris Chocola from Indiana. 13 Likewise, Congressman Chocola apparently 14 addressed animal welfare and guidelines at 15 your meeting. 16 Do you see that? 17 A. Yes. 18 Q. Do you recall what that congressman had 19 to say about animal welfare and guidelines? 20 A. No. Again, not specifically. 21 Q. Was there a general concern at this 22 period of time about animal welfare issues? 23 A. Yes, definitely. 24 Q. One of the topics under Congressman 25 Chocola's name, right under animal welfare,</p>
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<p>1 do -- I'm familiar with him. 2 Q. Has Dr. Brackett spoken at more than one 3 UEP meeting? 4 A. I don't recall him being at any other 5 meetings. 6 Q. Now, Dr. Dehaven from the United States 7 Department of Agriculture you testified spoke 8 at other UEP meetings, correct? 9 A. I think so, yes. 10 Q. Was it commonplace for representatives of 11 the United States Department of Agriculture to 12 appear at a UEP meeting and participate in the 13 meeting? 14 A. Well, they would be scheduled to come in 15 and speak. And then they would not 16 necessarily stay with the meeting. Usually 17 they are in and out. And our schedule on 18 these Washington meetings is very fluid to 19 allow for -- whether it be a congressman, a 20 senator or somebody in a higher authority with 21 a full calendar. 22 Q. But from time to time USDA 23 representatives did attend your meetings? 24 A. Yes. 25 Q. Now, there are two congressmen who are</p>	<p>1 the second topic says: Bill introduced, 2 titled, quote: Stop Terrorism of Property, 3 close quote. 4 Do you see that? 5 A. Yes. 6 Q. Do you have any idea what that refers to? 7 A. I don't -- I can't remember either what 8 that was specifically -- have dealt with. 9 Q. Do you recall at this period of time 10 whether certain animal rights activists were 11 engaging in violent acts against people in the 12 egg industry? 13 A. I don't remember anybody -- any acts 14 against people. I remember farms or property 15 being -- maybe trespassing and those kinds of 16 things, but that's all my recollection. 17 Q. Do you recall any destruction of 18 property? 19 A. I can't remember if it was this period or 20 not, no. 21 Q. Was -- were the activities of animal 22 rights organizations of any concern to Michael 23 Foods? 24 A. Yes. 25 Q. What was the nature of your concern?</p>

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<p>1 A. Well, there were a number of videos being 2 released from different organizations. And so 3 we had concerns of people unlawfully entering 4 our premises for the purpose of staging videos 5 or whatever. So yes, we had concerns. 6 Q. Would you please take a look at what was 7 previously marked as Baker Exhibit 8. Again, 8 this is another exhibit that Mr. Neuwirth 9 asked you about. 10 A. Okay. 11 Q. And again, for the record, the top email 12 is from Mr. Ostrander to you and a number of 13 other -- I assume they are all Michael Foods 14 employees, is that correct? 15 A. I think it is, yes. 16 Q. Okay. Mr. Ostrander is the big boss, 17 correct? 18 A. Correct. 19 Q. Now, if you look at Mr. Ostrander's 20 comments, in the fourth line from the bottom 21 of his email to you and the other Michael 22 Foods employees, he says: If it gets 23 publicity, it could also bring substantial 24 reaction from the folks at PETA and other 25 radical animal welfare groups.</p>	<p>1 credentials. But yes, he was educated and 2 ultimately achieved his Ph.D., I believe. 3 Q. Didn't he work as a lobbyist for UEP? 4 A. Initially he did, yes. He was in the 5 Washington team, yes. 6 Q. Okay. Did he have -- to support his 7 animal welfare program, did he have a group of 8 recognized animal welfare scientists to 9 support him? 10 MR. GREENE: Objection, lack of 11 foundation. 12 THE WITNESS: He actually did have 13 some scientists, a group put together for a 14 scientific advisory committee. But as far as 15 the names, credentials, I can't speak to that. 16 And he accumulated a very large body of data 17 and studies initially that he worked with with 18 those folks. 19 BY MR. BARNES: 20 Q. Was the program he was promoting called 21 Process Verified? 22 A. Yes. PV -- yeah, process, something like 23 that, yes. 24 Q. And he was one of your consultants, 25 correct?</p>
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<p>1 Do you see that reference? 2 A. Yes, I do. 3 Q. Is it fair to say that in February of 4 2005 when this email was written by 5 Mr. Ostrander, Michael Foods was concerned 6 about substantial reactions from PETA and 7 other radical animal welfare groups? 8 A. Yes. 9 Q. Now, there was also a number of questions 10 directed to you about Mr. Ken Klippen. Do you 11 recall generally that examination? 12 A. Yes. 13 Q. I believe you testified that there was 14 some difference of opinion or disagreement 15 between Mr. Klippen and Mr. Gregory, is that 16 correct? 17 A. Yes. 18 Q. According to my notes, Mr. Neuwirth asked 19 you whether Mr. Klippen was promoting a, 20 quote, science-based animal welfare program, 21 and you responded yes. 22 Do you recall that testimony? 23 A. Yes. 24 Q. Was Mr. Klippen a scientist? 25 A. He was a -- I don't remember his</p>	<p>1 A. Yes. 2 Q. You've testified a number of times that 3 Michael Foods wanted a level playing field, 4 correct? 5 A. Yes. 6 Q. And that Michael Foods was concerned 7 about competitors and gaining a competitive 8 advantage, is that correct? 9 A. Yes. 10 Q. Isn't it a fact that other members of UEP 11 whose business model was different than 12 Michael Foods had the same kinds of concerns? 13 MR. GREENE: Objection, lack of 14 foundation. 15 THE WITNESS: Yes, it's possible. 16 BY MR. BARNES: 17 Q. Would you direct your attention back to 18 Baker Exhibit 18, please. Do you have 19 Exhibit 18 in front of you, Mr. Baker? 20 A. I do. 21 Q. And again, this was marked earlier in 22 your deposition. It's an email from you dated 23 April 26, 2006. And it's -- the subject is an 24 update on UEP board conference call. 25 Do you see that?</p>

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<p>1 A. Yes.</p> <p>2 Q. Would you read the second paragraph from</p> <p>3 the top to yourself, please.</p> <p>4 A. (Reviews document.) Okay.</p> <p>5 Q. Did you read it, Mr. Baker?</p> <p>6 A. Yes.</p> <p>7 Q. Does that refresh your recollection that</p> <p>8 other members of UEP from time to time also</p> <p>9 were concerned about fairness and other people</p> <p>10 obtaining a competitive advantage over them?</p> <p>11 A. Yes.</p> <p>12 Q. And your recollection is now refreshed</p> <p>13 that that did happen, correct?</p> <p>14 A. Oh, yes.</p> <p>15 Q. Thank you. Now, I believe you testified</p> <p>16 earlier, and I want to be clear, that back in</p> <p>17 the early years of 2000; 2000, 2001, '02, '03,</p> <p>18 et cetera, I think you used the term "growing</p> <p>19 interest" in customers who wanted some type of</p> <p>20 animal care certified egg products, is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 MR. GREENE: Did you mean that to</p> <p>24 be a reference to the specific animal care</p> <p>25 certified program --</p>	<p>1 MR. GREENE: Defense T. Baker 1.</p> <p>2 (Exhibit Defense T. Baker 1 marked</p> <p>3 for identification.)</p> <p>4 BY MR. BARNES:</p> <p>5 Q. Mr. Baker, would you take a moment to</p> <p>6 look at what has been marked as Defense</p> <p>7 Exhibit 1. The identification number is</p> <p>8 MFI0096330. It is a one-page document which</p> <p>9 contains two email messages. The first</p> <p>10 message at the top is from a Mr. Bill Goucher.</p> <p>11 It's dated December 13, 2002. And Mr. Baker</p> <p>12 appears as a cc. The subject of the top email</p> <p>13 is RE: Sysco Animal Welfare Auditing. The</p> <p>14 bottom email is from Mr. Steve Bacon, the same</p> <p>15 date, to Mr. Goucher and Mr. Bebee. The</p> <p>16 subject is Sysco Animal Welfare Auditing.</p> <p>17 Do you recall receiving this email?</p> <p>18 A. I do not.</p> <p>19 Q. Do you recall the substance of the email?</p> <p>20 A. No, I do not.</p> <p>21 Q. Now, does this refresh your recollection,</p> <p>22 Mr. Baker, that in the year 2002, one of your</p> <p>23 major customers, Sysco, had expressed an</p> <p>24 interest -- and actually, according to the</p> <p>25 email, it's more than an interest, the bottom</p>
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<p>1 MR. BARNES: No.</p> <p>2 MR. GREENE: -- or just animal</p> <p>3 welfare in general?</p> <p>4 BY MR. BARNES:</p> <p>5 Q. Animal welfare in general in the early</p> <p>6 2000s.</p> <p>7 A. Yes.</p> <p>8 Q. And it was a growing movement, correct?</p> <p>9 A. Yes, I would characterize it as at least</p> <p>10 interest. There was interest -- I call it</p> <p>11 kind of a learning period too.</p> <p>12 Q. Okay. Do you recall -- strike that.</p> <p>13 I believe you testified that Sysco was</p> <p>14 one of your major customers, is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall whether in the year 2002</p> <p>17 Sysco expressed an interest in obtaining UEP</p> <p>18 certified eggs and egg products from Michael</p> <p>19 Foods?</p> <p>20 A. I'm not aware. I'm not involved in that</p> <p>21 area, so I can't -- I don't specifically know</p> <p>22 that.</p> <p>23 MR. BARNES: Let's mark as our next</p> <p>24 exhibit -- let's call this -- to even confuse</p> <p>25 everyone more than we're confused, Defense 1.</p>	<p>1 email from Mr. Bacon says they will use the</p> <p>2 UEP guidelines as a standard.</p> <p>3 Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Then the top email from -- who is</p> <p>6 Mr. Goucher, by the way?</p> <p>7 A. In 2002 Bill Goucher was the president of</p> <p>8 MFI -- Michael Foods Egg Products Company.</p> <p>9 Q. Was he your boss?</p> <p>10 A. Yeah, he was my boss at that point.</p> <p>11 Q. Mr. Bacon, who was Mr. Bacon?</p> <p>12 A. He's our vice president of quality,</p> <p>13 corporate quality.</p> <p>14 Q. Now, the top email from Mr. Goucher in</p> <p>15 response to Mr. Bacon talks again about</p> <p>16 supplying Sysco with UEP certified product, is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, I might have asked you this, and if</p> <p>20 I'm repeating myself, I apologize. Does this</p> <p>21 refresh your recollection that in the year</p> <p>22 2002, one of your major customers, Sysco,</p> <p>23 desired to obtain UEP Certified product?</p> <p>24 A. Yes. It's clear in the email that there</p> <p>25 was interest.</p>

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<p>1 Q. Now, the subject of commingling has come</p> <p>2 up repeatedly in your deposition, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And I believe UEP and certain UEP members</p> <p>5 from time to time expressed concerns that UEP</p> <p>6 licensees, people who had a license but were</p> <p>7 not UEP Certified, would commingle UEP</p> <p>8 Certified eggs with non-certified eggs.</p> <p>9 Do you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall that ever happening, any</p> <p>12 instance where a UEP -- pardon me, different</p> <p>13 question -- strike that.</p> <p>14 But you do recall commingling was</p> <p>15 somewhat of a concern?</p> <p>16 A. Yes.</p> <p>17 Q. Now, would you again take a look at</p> <p>18 Defense Exhibit 1 and Mr. Goucher's email on</p> <p>19 the top. And Mr. Goucher says, quote: Steve,</p> <p>20 we have not signed up for the UEP</p> <p>21 certification, and our egg source is coming</p> <p>22 from many suppliers that end up making Sysco</p> <p>23 products. We may have enough outside egg</p> <p>24 supply from certified UEP producers to cover</p> <p>25 the Sysco volume of product, but this egg is</p>	<p>1 MR. GREENE: Object to the</p> <p>2 characterization.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. BARNES:</p> <p>5 Q. And Michael Foods would never even</p> <p>6 consider doing that, I assume?</p> <p>7 A. No.</p> <p>8 Q. Did this problem occur with any other</p> <p>9 Michael Foods customers around the same period</p> <p>10 of time as Defense Exhibit 1, the problem of</p> <p>11 not being able to segregate certified from</p> <p>12 uncertified product?</p> <p>13 MR. GREENE: Object to the</p> <p>14 characterization of not being able to</p> <p>15 segregate.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: I'm not aware of any.</p> <p>18 BY MR. BARNES:</p> <p>19 Q. Let's mark as Defense Exhibit 2 --</p> <p>20 (Exhibit Defense T. Baker 2 marked</p> <p>21 for identification.)</p> <p>22 BY MR. BARNES:</p> <p>23 Q. Defense Exhibit 2 is a two-page set of</p> <p>24 emails bearing identification numbers -- it's</p> <p>25 two different sets, I'll use the MFI number,</p>
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<p>1 not segregated by product.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. "In order to ship only certified products</p> <p>5 to Sysco, we would need to put together an</p> <p>6 extremely complicated plan over a fairly</p> <p>7 lengthy period of time."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does this reflect a commingling concern</p> <p>11 that Michael Foods had at this period of time?</p> <p>12 MR. GREENE: Object to the</p> <p>13 characterization.</p> <p>14 THE WITNESS: I don't believe so.</p> <p>15 BY MR. BARNES:</p> <p>16 Q. Okay. But it appears, doesn't it, that</p> <p>17 Mr. Goucher was concerned that you -- although</p> <p>18 you might have had enough outside egg supply</p> <p>19 from certified UEP producers to supply Sysco,</p> <p>20 that product was not segregated.</p> <p>21 Do you see that?</p> <p>22 A. Yes, that would be correct.</p> <p>23 Q. And you couldn't supply a customer with</p> <p>24 certified and non-certified product when the</p> <p>25 customer specified certified, could you?</p>	<p>1 MFI0096331, MFI0096332. The first email on</p> <p>2 the first page is again an email from</p> <p>3 Mr. Goucher dated January 15, 2003, to</p> <p>4 Mr. Bacon, and Mr. Terry Baker is one of the</p> <p>5 people copied on this email. Do you recall</p> <p>6 receiving a copy of this email, Mr. Baker?</p> <p>7 A. Not specifically, no.</p> <p>8 Q. Mr. Goucher's email on the top says:</p> <p>9 Need to get Vince involved on this topic as</p> <p>10 well -- it says at Baker, but I assume it</p> <p>11 means as Baker -- so that we have the same</p> <p>12 response as everyone. We do have UEP</p> <p>13 Certified producers that supply us with a</p> <p>14 portion of our egg needs. We can support the</p> <p>15 TB business. What does TB stand for?</p> <p>16 A. I don't know. I was --</p> <p>17 Q. Taco Bell perhaps?</p> <p>18 A. I don't know.</p> <p>19 Q. Well, if you look at the very bottom on</p> <p>20 this email chain, very bottom of the page</p> <p>21 there's an email from Megan Euper.</p> <p>22 Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. You see her email address?</p> <p>25 A. Yes.</p>

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<p>1 Q. What is her email address?</p> <p>2 A. Taco Bell.</p> <p>3 Q. Back to the top email, it says: We can</p> <p>4 support the TB business with this supply. But</p> <p>5 we do not segregate this egg through our</p> <p>6 facilities. We have too much volume for</p> <p>7 customers that do not require specific egg</p> <p>8 supply.</p> <p>9 Does this refresh your recollection that</p> <p>10 there was another instance where Michael Foods</p> <p>11 would have difficulty supplying certified</p> <p>12 product because of its inability to segregate</p> <p>13 the certified from the non-certified?</p> <p>14 MR. GREENE: Object to the</p> <p>15 characterization.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. You can answer.</p> <p>18 A. Yes.</p> <p>19 Q. Thank you. While you were involved with</p> <p>20 UEP on the board, you're still on the board,</p> <p>21 did the board get reports from time to time</p> <p>22 about members who had increased their</p> <p>23 production from the period 2004, let's say,</p> <p>24 until 2008?</p> <p>25 A. Not that I recall.</p>	<p>1 A. I don't even remember a number. I just</p> <p>2 remember there was a permit and there was a</p> <p>3 permitting question or something maybe.</p> <p>4 That's about the extent of my recollection.</p> <p>5 Q. Okay. Any other recollections about Rose</p> <p>6 Acre increasing production even though it was</p> <p>7 a member of the UEP Certified program?</p> <p>8 MR. KINNEY: Objection.</p> <p>9 THE WITNESS: Not specifically, no.</p> <p>10 BY MR. BARNES:</p> <p>11 Q. Generally?</p> <p>12 A. Not generally, no, I...</p> <p>13 Q. Okay. Before I forget, you were asked</p> <p>14 about Mr. Jim Dean, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And he was on the UEP board, but he was</p> <p>17 not certified, correct?</p> <p>18 A. I believe that's true.</p> <p>19 Q. You also testified that the UEP Certified</p> <p>20 program was voluntary, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Is this an example where even a UEP board</p> <p>23 member could voluntarily refuse to participate</p> <p>24 in a UEP-sponsored program?</p> <p>25 A. Yes.</p>
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<p>1 Q. Did you ever get reports, whether it was</p> <p>2 given at a board meeting or indirectly from a</p> <p>3 contact or a discussion that you had that</p> <p>4 particular members of UEP were increasing</p> <p>5 their production while participating as UEP</p> <p>6 Certified producers?</p> <p>7 A. Anecdotally we tried to keep up or keep</p> <p>8 aware if we heard a conversation or heard of a</p> <p>9 building permit or something. But it wasn't a</p> <p>10 formal process. But Toby and I tried to keep</p> <p>11 up with that, yes.</p> <p>12 Q. Did you ever get reports that my client,</p> <p>13 Rose Acre Farms, was increasing production</p> <p>14 dramatically in North Carolina?</p> <p>15 MR. GREENE: Objection, vague.</p> <p>16 MR. KINNEY: Objection.</p> <p>17 BY MR. BARNES:</p> <p>18 Q. You may answer. There were two</p> <p>19 objections, but you can answer.</p> <p>20 A. Yes, we did hear of a project they built</p> <p>21 in Carolina.</p> <p>22 Q. Was that known as Hyde County?</p> <p>23 A. I don't know the name.</p> <p>24 Q. What did you hear about the Rose Acre</p> <p>25 project in North Carolina, do you recall?</p>	<p>1 MR. KINNEY: Objection.</p> <p>2 MR. BARNES: You got the answer?</p> <p>3 THE COURT REPORTER: Yes.</p> <p>4 BY MR. BARNES:</p> <p>5 Q. As you can see, I'm winding down.</p> <p>6 Mr. Baker, many of the documents that you've</p> <p>7 looked at today consist of minutes, UEP board</p> <p>8 minutes, UEP committee meeting minutes,</p> <p>9 producer welfare committee and others. Do you</p> <p>10 recall generally looking at those types of</p> <p>11 documents?</p> <p>12 A. Yes.</p> <p>13 Q. Many of those documents recorded votes on</p> <p>14 various motions.</p> <p>15 Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall that many of those votes</p> <p>18 were split?</p> <p>19 A. Yes, I was usually in the splitting</p> <p>20 group.</p> <p>21 Q. You were one of the splitters, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. But doesn't that indicate that</p> <p>24 there was simply a difference of opinion among</p> <p>25 UEP board members and committee members about</p>

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<p>1 particular actions to endorse?</p> <p>2 MR. GREENE: Objection,</p> <p>3 argumentative.</p> <p>4 THE WITNESS: I guess I'm not sure</p> <p>5 how to answer. I'm not sure I understand the</p> <p>6 question.</p> <p>7 BY MR. BARNES:</p> <p>8 Q. Did you observe a healthy attitude among</p> <p>9 UEP board members and committee members about</p> <p>10 diverse views, people could express their</p> <p>11 different views?</p> <p>12 MR. GREENE: Objection, vague.</p> <p>13 MR. KINNEY: Objection.</p> <p>14 THE WITNESS: I heard a lot of</p> <p>15 expression of views.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. Right.</p> <p>18 A. They weren't always real civil, but I did</p> <p>19 hear them, yes.</p> <p>20 Q. But I guess what I was getting at is it</p> <p>21 didn't appear from the documents to be all</p> <p>22 one-sided, that there were different views</p> <p>23 expressed at different times?</p> <p>24 MR. KINNEY: Objection.</p> <p>25 BY MR. BARNES:</p>	<p>1 them now?</p> <p>2 MR. DAVIS: Are you going to be</p> <p>3 taking a break?</p> <p>4 MR. GREENE: We can. Once</p> <p>5 everybody is done with the questioning, I</p> <p>6 would like to take a break. But I would like</p> <p>7 to get all the other questioning done first.</p> <p>8 MR. DAVIS: Sure. I can ask mine</p> <p>9 now. That's fine.</p> <p>10 MR. GREENE: Okay. Why don't you</p> <p>11 identify yourself and go ahead and ask your</p> <p>12 questions.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Mr. Baker, my name is Evan Davis. I'm</p> <p>18 counsel for UEP and USEM. I just have very</p> <p>19 short questions for you. One regards to some</p> <p>20 of your testimony about the 100 percent rule.</p> <p>21 And I just want to clarify. Insofar as the</p> <p>22 100 percent rule required that any producer</p> <p>23 who was on the certified program implement the</p> <p>24 certified guidelines for 100 percent of its</p> <p>25 flock, has that rule always been in place for</p>
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<p>1 Q. Fair to say?</p> <p>2 A. I don't know. I don't know how to</p> <p>3 characterize that, I guess.</p> <p>4 Q. But there were different votes for and</p> <p>5 against?</p> <p>6 A. Yes.</p> <p>7 Q. All the votes weren't always in favor,</p> <p>8 were they?</p> <p>9 MR. KINNEY: In favor of what?</p> <p>10 THE WITNESS: I don't remember</p> <p>11 winning many of them in that era.</p> <p>12 MR. KINNEY: Objection.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. None of them were always all against?</p> <p>15 A. No.</p> <p>16 Q. Mr. Baker, thank you very much. I</p> <p>17 appreciate your patience and cooperation?</p> <p>18 MR. GREENE: Do you have anything</p> <p>19 more? We're going to have some final</p> <p>20 questions, but why don't you go ahead.</p> <p>21 Anyone on the phone planning to ask</p> <p>22 questions?</p> <p>23 MR. DAVIS: I'm going to have about</p> <p>24 90 seconds worth of questions.</p> <p>25 MR. GREENE: Do you want to ask</p>	<p>1 the duration of the certified program?</p> <p>2 A. My understanding was at the outset it was</p> <p>3 not part of the initial guidelines that were</p> <p>4 put together. But in short order afterwards</p> <p>5 it became part of the program. But I don't</p> <p>6 know the timeline.</p> <p>7 Q. You were questioned about a period in</p> <p>8 2004 into 2005 when a change was made</p> <p>9 regarding the ability of non-certified</p> <p>10 producers to buy and resell certified eggs.</p> <p>11 Is that separate and apart from anything that</p> <p>12 deals with the 100 percent rule applying to</p> <p>13 certified producers and their own egg</p> <p>14 production?</p> <p>15 A. I'm not -- can you repeat that last part</p> <p>16 of the question.</p> <p>17 MR. GREENE: Why don't you repeat</p> <p>18 the whole question, please.</p> <p>19 BY MR. DAVIS:</p> <p>20 Q. Sure. I'll phrase it a little bit</p> <p>21 differently. You testified earlier that in</p> <p>22 2004 into 2005 there was a rule and then a</p> <p>23 change to a rule that pertained to the ability</p> <p>24 of non-certified producers to buy and resell</p> <p>25 certified eggs.</p>

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<p>1 Do you recall that testimony?</p> <p>2 A. Yes.</p> <p>3 Q. And additionally there was a rule called</p> <p>4 the 100 percent rule that pertained to</p> <p>5 certified producers and required that they</p> <p>6 implement the guidelines on 100 percent of</p> <p>7 their hens.</p> <p>8 Do you recall that rule?</p> <p>9 A. Yes.</p> <p>10 Q. And these two rules are different from</p> <p>11 one another, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. But my other question just has to</p> <p>14 deal with egg production and the cost of egg</p> <p>15 production. There are some costs to egg</p> <p>16 production that you would consider fixed</p> <p>17 costs, right?</p> <p>18 A. Yes.</p> <p>19 Q. And there are other costs to egg</p> <p>20 production that one might consider variable</p> <p>21 costs, is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. And a few of the things that would be</p> <p>24 considered variable, would feed be considered</p> <p>25 a variable cost insofar as --</p>	<p>1 MR. GREENE: Is that enough for you</p> <p>2 or not?</p> <p>3 MR. KINNEY: I'll have to look.</p> <p>4</p> <p>5 FURTHER EXAMINATION</p> <p>6</p> <p>7 BY MR. KINNEY:</p> <p>8 Q. Do you have Exhibit 2?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Barnes asked you about these various</p> <p>11 speakers that are identified, congressmen and</p> <p>12 Ph.D.s and so forth. Based on your testimony,</p> <p>13 isn't it correct that when you had this</p> <p>14 Washington meeting with these folks that you</p> <p>15 slotted them in to accommodate their schedules</p> <p>16 and their availability?</p> <p>17 A. Yes.</p> <p>18 Q. And they didn't sit through all the</p> <p>19 business meetings, did they?</p> <p>20 A. Not normally, no.</p> <p>21 Q. Okay. And Mr. Barnes also asked you</p> <p>22 about commingling and how it affected Michael</p> <p>23 Foods' ability to supply Sysco in particular.</p> <p>24 Do you recall that -- those questions?</p> <p>25 A. Yes.</p>
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<p>1 THE COURT REPORTER: You cut out.</p> <p>2 MR. GREENE: Would you repeat the</p> <p>3 question.</p> <p>4 BY MR. DAVIS:</p> <p>5 Q. Sure. Would feed be a variable cost</p> <p>6 insofar as the fewer hens that a producer had,</p> <p>7 the less feed it would need to feed those</p> <p>8 hens?</p> <p>9 A. Yes, that would be -- be one of the</p> <p>10 definite variables.</p> <p>11 Q. And would the same be true for pullets in</p> <p>12 that if a producer placed fewer pullets, the</p> <p>13 cost associated with doing so would decrease?</p> <p>14 A. The total dollars would decrease, but not</p> <p>15 the cost per bird or per pullet or per unit.</p> <p>16 Q. No, not the per-unit cost but the total</p> <p>17 cost would vary with the number of pullets</p> <p>18 placed, is that right?</p> <p>19 A. Yes, I think that would be a correct</p> <p>20 assumption.</p> <p>21 MR. DAVIS: Mr. Baker, that's all</p> <p>22 the questions that I have. Thanks very much</p> <p>23 for your time.</p> <p>24 THE VIDEOGRAPHER: We only have</p> <p>25 five minutes left on this videotape.</p>	<p>1 Q. And at that same point in time, Michael</p> <p>2 Foods already had a program in place to supply</p> <p>3 Burger King with the eggs that met its</p> <p>4 particular program requirements, correct?</p> <p>5 A. Correct.</p> <p>6 Q. So it wasn't any big deal for Michael</p> <p>7 Foods to come up with a plan to segregate eggs</p> <p>8 that met the particular program requirements</p> <p>9 for Burger King versus Sysco, correct?</p> <p>10 A. No, because we segregated Burger King</p> <p>11 eggs.</p> <p>12 Q. Right. You already knew how to do it,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. If Michael Foods' customers in 2003 had</p> <p>16 begun to request significant amounts of</p> <p>17 certified -- UEP Certified eggs, your</p> <p>18 confident that Michael Foods had the ability</p> <p>19 to do that kind of segregation, correct?</p> <p>20 A. Yes, I believe so.</p> <p>21 Q. And there was some questions about split</p> <p>22 votes. Ordinarily at the board level if</p> <p>23 there's a split vote, whatever the majority is</p> <p>24 is the prevailing view, correct?</p> <p>25 A. Yes, it's a simple majority I believe is</p>

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<p>1 the bylaw.</p> <p>2 Q. And that becomes the -- whatever the</p> <p>3 policy is going forward for UEP?</p> <p>4 A. Yes.</p> <p>5 MR. KINNEY: Thank you.</p> <p>6</p> <p>7 FURTHER EXAMINATION</p> <p>8</p> <p>9 BY MR. BARNES:</p> <p>10 Q. Follow up question, please. Mr. Kinney</p> <p>11 just asked you or stated that it would be no,</p> <p>12 quote, big deal for Michael Foods to set up a</p> <p>13 program for Sysco just like they had set up</p> <p>14 for Burger King.</p> <p>15 Do you recall that question?</p> <p>16 A. Yes.</p> <p>17 MR. GREENE: Object to the</p> <p>18 characterization.</p> <p>19 Go ahead.</p> <p>20 BY MR. BARNES:</p> <p>21 Q. Take another look at Defense Exhibit 1,</p> <p>22 please. That's not what that exhibit says, is</p> <p>23 it?</p> <p>24 MR. GREENE: Before you answer, I</p> <p>25 want to get the exhibit in front of me.</p>	<p>1 was not something Mr. Goucher would agree to?</p> <p>2 MR. GREENE: Objection,</p> <p>3 argumentative, lack of foundation.</p> <p>4 MR. KINNEY: Objection.</p> <p>5 BY MR. BARNES:</p> <p>6 Q. It was a big deal, wasn't it, Mr. Baker?</p> <p>7 MR. GREENE: Same objection.</p> <p>8 THE WITNESS: It's something we do.</p> <p>9 Yes, it would have taken time, but it's</p> <p>10 something we do.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. It would have been extremely complicated</p> <p>13 over a fairly lengthy period of time, correct?</p> <p>14 MR. GREENE: Objection, asked and</p> <p>15 answered.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. Correct?</p> <p>18 A. I don't know.</p> <p>19 Q. You disagree with your boss, Mr. Goucher,</p> <p>20 his observation?</p> <p>21 MR. GREENE: Objection,</p> <p>22 argumentative.</p> <p>23 BY MR. BARNES:</p> <p>24 Q. You disagree with Mr. Goucher?</p> <p>25 MR. GREENE: Same objection.</p>
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<p>1 BY MR. BARNES:</p> <p>2 Q. Defense Exhibit 1. This is the email</p> <p>3 from Mr. Goucher to Mr. Bacon with a copy to</p> <p>4 you December of 2002. This is 2002. When did</p> <p>5 you start supplying Sysco with certified</p> <p>6 product?</p> <p>7 MR. GREENE: Objection, lack of</p> <p>8 foundation.</p> <p>9 THE WITNESS: I'm not aware. I</p> <p>10 don't know.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. You obviously weren't doing it at the</p> <p>13 time of this email in 2002, were you?</p> <p>14 MR. KINNEY: Objection.</p> <p>15 THE WITNESS: I don't believe so,</p> <p>16 no.</p> <p>17 BY MR. BARNES:</p> <p>18 Q. And the email does say: In order to ship</p> <p>19 only certified products to Sysco, we would</p> <p>20 need to put together an extremely complicated</p> <p>21 plan over a fairly lengthy period of time.</p> <p>22 Isn't that what Mr. Goucher is telling you?</p> <p>23 A. That's what his email says, yes.</p> <p>24 Q. So I take it Mr. Kinney's</p> <p>25 characterization of it wouldn't be a big deal</p>	<p>1 THE WITNESS: Yes.</p> <p>2 BY MR. BARNES:</p> <p>3 Q. You disagree with him?</p> <p>4 A. (No verbal response.)</p> <p>5 Q. Is that a yes?</p> <p>6 A. I'm not sure what you want me to say</p> <p>7 here.</p> <p>8 Q. No, I want you to just respond to the</p> <p>9 question and answer truthfully.</p> <p>10 Mr. Goucher in this email to a number of</p> <p>11 employees, including you, regarding supplying</p> <p>12 Sysco with certified product pointed out a</p> <p>13 problem. He said it would be extremely</p> <p>14 complicated plan over a fairly lengthy period</p> <p>15 of time. That's what he said.</p> <p>16 A. That was his take on it.</p> <p>17 Q. Okay.</p> <p>18 A. I'm not disputing his take on it. I</p> <p>19 don't know. I was not involved, so I don't</p> <p>20 know.</p> <p>21 Q. Did you ever tell Mr. Goucher you</p> <p>22 disagreed with his conclusion?</p> <p>23 A. I don't know that we were involved in</p> <p>24 that. That's not -- not our purview.</p> <p>25 Q. When you say "our purview," what --</p>

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<p>1 A. I'm egg procurement.</p> <p>2 Q. You egg procurement people?</p> <p>3 A. Yes, that's what I am referring to.</p> <p>4 Q. All right. So that was out of your</p> <p>5 bailiwick?</p> <p>6 A. That was an operational question, yes.</p> <p>7 MR. BARNES: Okay. Thank you,</p> <p>8 Mr. Baker.</p> <p>9 MR. GREENE: I'd like to take a</p> <p>10 break. I'm going to have a few questions.</p> <p>11 THE VIDEOGRAPHER: We are going off</p> <p>12 the record.</p> <p>13 The time is 5:24 p.m.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: We are back on</p> <p>16 the record. This marks the beginning of</p> <p>17 videotape number 5 in the deposition of</p> <p>18 Terry Baker.</p> <p>19 The time is 5:38 p.m.</p> <p>20</p> <p>21 EXAMINATION</p> <p>22</p> <p>23 BY MR. GREENE:</p> <p>24 Q. Mr. Baker, thank you for your patience</p> <p>25 today. I'm going to ask you first about Baker</p>	<p>1 up of an estimated reduction of 4,722,000 of</p> <p>2 internal birds, and then additionally another</p> <p>3 10 million of our external supply. So that</p> <p>4 represented the total of our whole supply</p> <p>5 chain being converted to ACC.</p> <p>6 Q. That was the exercise you were</p> <p>7 performing, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall this morning that you were</p> <p>10 asked some questions about backfilling?</p> <p>11 A. Yes.</p> <p>12 Q. And about a UEP board vote regarding</p> <p>13 backfilling.</p> <p>14 Do you recall that?</p> <p>15 A. Yes.</p> <p>16 Q. I'd like to mark -- we'll call it Defense</p> <p>17 Exhibit 3.</p> <p>18 (Exhibit Defense T. Baker 3 marked</p> <p>19 for identification.)</p> <p>20 BY MR. GREENE:</p> <p>21 Q. Directing your attention to Defense</p> <p>22 Exhibit 2 [sic], the Bates numbers here are</p> <p>23 MFI0007809 through 811.</p> <p>24 MR. BARNES: Bill, it's Defense 3.</p> <p>25 MR. GREENE: I'm sorry, Defense</p>
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<p>1 Exhibit 23. Do you have that in front of you?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Okay. You were asked earlier about</p> <p>4 the -- some of the numbers that appear on the</p> <p>5 sheet that ends 7308. Do you have that sheet</p> <p>6 in front of you?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And in particular, I think you were asked</p> <p>9 earlier about the line item toward the bottom</p> <p>10 of the page that reads: Total reduction in</p> <p>11 production fully phased. And there is a</p> <p>12 column that says Layer Capacity.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then the figure that appears</p> <p>16 there is 14,861,904.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What does that figure signify in this</p> <p>20 quantitative analysis?</p> <p>21 A. The 14,861,000 was the total of the</p> <p>22 projected or estimated reduction in a</p> <p>23 full -- if we were to have converted our total</p> <p>24 supply chain into UEP ACC at that point in</p> <p>25 time, so it was the -- the 14 million was made</p>	<p>1 Exhibit 3.</p> <p>2 BY MR. GREENE:</p> <p>3 Q. And the -- these are the minutes of a UEP</p> <p>4 board of directors conference call dated</p> <p>5 December 16, 2004, is that correct, Mr. Baker?</p> <p>6 A. Yes.</p> <p>7 Q. And you recognize this as the format of</p> <p>8 UEP minutes?</p> <p>9 A. Yes.</p> <p>10 Q. Now, you testified earlier today about a</p> <p>11 UEP board of directors vote that prohibited or</p> <p>12 limited the practice of backfilling.</p> <p>13 Do you recall that testimony?</p> <p>14 A. Yes.</p> <p>15 Q. And I want to direct your attention to</p> <p>16 the motions that are -- that appear in the</p> <p>17 minutes that we're talking about, Defense</p> <p>18 Exhibit 3, the December 16, 2004, minutes.</p> <p>19 There are a series of motions.</p> <p>20 Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Okay. And the first motion reads --</p> <p>23 directing your attention to the middle of the</p> <p>24 page first motion reads: Motion, backfilling</p> <p>25 is prohibited under the animal care certified</p>

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<p>1 program. And then the paragraph goes on -- it</p> <p>2 goes on: An exception shall be made for</p> <p>3 flocks that have experienced catastrophic</p> <p>4 mortality. And I'm not going to read the</p> <p>5 entire paragraph.</p> <p>6 Do you see that the paragraph?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And do you see that that motion carried?</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And the next motion is that the motion</p> <p>12 limiting backfilling to only a catastrophic</p> <p>13 event shall become effective immediately with</p> <p>14 the exception of chicks ordered or pullets</p> <p>15 currently being grown for housing through</p> <p>16 June 1, 2005.</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And according to the minutes, that motion</p> <p>20 carried as well, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then there is another motion that</p> <p>23 reads -- next motion, that: Unauthorized</p> <p>24 backfilling be treated the same as cage space</p> <p>25 allowance and therefore will result in a</p>	<p>1 call?</p> <p>2 A. No.</p> <p>3 Q. Okay. Having reviewed Defense Exhibit 3,</p> <p>4 did you vote on the UEP board measures that</p> <p>5 prohibited or limited backfilling?</p> <p>6 A. No, I was not present or available that</p> <p>7 day.</p> <p>8 MR. GREENE: No further questions.</p> <p>9 MR. KINNEY: I have a couple of</p> <p>10 questions.</p> <p>11</p> <p>12 FURTHER EXAMINATION</p> <p>13</p> <p>14 BY MR. KINNEY:</p> <p>15 Q. Mr. Baker, before you were questioned by</p> <p>16 Mr. Greene we took a break. Did you discuss</p> <p>17 the substance of your testimony today with</p> <p>18 Mr. Greene during the break?</p> <p>19 A. During the last break?</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. You had a discussion with him about your</p> <p>23 testimony today?</p> <p>24 A. Oh, no. No, only --</p> <p>25 Q. Yes or no?</p>
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<p>1 failed audit.</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. And according to the minutes, that motion</p> <p>5 carried as well, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Now, in your experience, is it the</p> <p>8 practice of UEP in creating minutes to record</p> <p>9 those board members who are present or</p> <p>10 participating in a UEP board meeting?</p> <p>11 A. Yes, there's always a roll call.</p> <p>12 Q. Okay. And can you look at the list of</p> <p>13 names indicated as being present or</p> <p>14 participating -- present on the call is the</p> <p>15 way they put it. Can you look at the list of</p> <p>16 the names of those persons being listed as</p> <p>17 present on the call in this December 16, 2004,</p> <p>18 board of directors conference call?</p> <p>19 A. (Reviews document.) Yes.</p> <p>20 Q. Do you see that list?</p> <p>21 A. I do.</p> <p>22 Q. And are you included in that list?</p> <p>23 A. No, I was not.</p> <p>24 Q. Were you present -- I should say were you</p> <p>25 present on the call, the December 16, 2004,</p>	<p>1 A. No.</p> <p>2 Q. What did you do for 20 minutes, where</p> <p>3 were you? You all took a break. You all went</p> <p>4 off together. What did you do together?</p> <p>5 A. We were at -- discussing whether I</p> <p>6 actually was -- was present for that vote.</p> <p>7 Q. So you talked about the documents that</p> <p>8 you just been --</p> <p>9 A. That document.</p> <p>10 Q. -- asked about?</p> <p>11 A. Yeah, that document.</p> <p>12 Q. That's what I asked you.</p> <p>13 A. I'm sorry. I didn't know if you were</p> <p>14 talking about earlier breaks, because we never</p> <p>15 discussed --</p> <p>16 Q. Just now you took a break and you and</p> <p>17 your lawyer talked and you came back in and he</p> <p>18 asked you the questions and you gave the</p> <p>19 answers?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. All right. And backfilling -- he</p> <p>22 asked you about backfilling. So before you a</p> <p>23 became a UEP Certified producer Michael Foods</p> <p>24 backfilled, right?</p> <p>25 A. Yes.</p>

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<p>1 Q. And that was to fill gaps in flocks, 2 right? 3 A. Yes. 4 Q. All right. And once you became a UEP 5 Certified producer, you could only backfill if 6 there was catastrophic mortality, right? 7 A. That's correct. 8 Q. You couldn't fill in the gaps anymore, 9 right? 10 A. That's correct. 11 Q. So you had fewer hens in your flocks, 12 right? 13 MR. GREENE: Objection, 14 characterization. 15 And I also object that this is -- 16 goes beyond redirect at this point. 17 MR. KINNEY: This isn't beyond 18 redirect. 19 MR. GREENE: It is definitely 20 beyond redirect. The redirect -- I want to 21 make a record. 22 MR. KINNEY: Make your objection. 23 Objection to form or quiet. I don't want to 24 hear anything more. We've been very patient 25 with speaking objections by all defense</p>	<p>1 THE VIDEOGRAPHER: This marks the 2 end of the deposition. We are going off the 3 record. 4 The time is 5:48 p.m. 5 (Deposition concluded at 5:48 p.m.) 6 ***** 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 counsel. You have the right to say "objection 2 to form." That's all there is under the 3 Federal Rules, and you know it. 4 MR. GREENE: Well, you don't need 5 to point your finger. 6 MR. KINNEY: I can point my finger 7 at anybody and raise my voice, because this 8 has been long and painful listening to all you 9 people. You've had your chance. You've spoke 10 to your witness off the record which you 11 shouldn't have been doing. Now, I understand 12 your objection. Do you want to say anything 13 more before he answers the question? 14 MR. GREENE: Well, let's remind him 15 of the question. 16 MR. KINNEY: Would you read back 17 the question. 18 (Whereupon, the court reporter read 19 back the previous question.) 20 THE WITNESS: Yes. 21 MR. KINNEY: Thank you. 22 MR. GREENE: Anybody else? 23 (No response.) 24 MR. GREENE: We're all done? 25 The witness will read and sign.</p>	<p>1 REPORTER'S CERTIFICATE 2 3 STATE OF MINNESOTA) 4) ss. 5 COUNTY OF HENNEPIN) 6 7 I hereby certify that I reported the 8 deposition of Terry L. Baker on August 22, 2013 in 9 Minneapolis, Minnesota, and that the witness was by 10 me first duly sworn to tell the whole truth; 11 12 That the testimony was transcribed by me and 13 is a true record of the testimony of the witness; 14 15 That the cost of the original has been 16 charged to the party who noticed the deposition, and 17 that all parties who ordered copies have been 18 charged at the same rate for such copies; 19 20 That I am not a relative or employee or 21 attorney or counsel of any of the parties, or a 22 relative or employee of such attorney or counsel; 23 24 That I am not financially interested in the 25 action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality; That the right to read and sign the deposition transcript by the witness was reserved. WITNESS MY HAND AND SEAL THIS 28th day of August, 2013. Dana S. Anderson-Linnell Notary Public, Hennepin County, MN My commission expires 1/31/2015</p>

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